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C.O. 820 of 2022

**Tapan Haldar
Vs
Anju Dasgupta & Ors**

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. Dipanwita Ganguly,
Mr. Kaustav Bhattacharya,
... For the petitioner.

Mr. Sagarmay Ghosh, ... For the opposite parties.

Mr. Debjit Mukherjee, learned advocate appearing for the petitioner assails order dated 8th March, 2022 rejecting two fold prayers of the petitioner one pertaining to erroneous recording of statement of DW1 during cross examination with respect to some suggestions being put to such witness, and another for not taking any permission/leave to examine witnesses for the defendant prior to the examination of the plaintiff's witness, as available under Order 18 Rule 3A of the CPC.

As per submission disclosed by Mr. Mukherjee, there has been some erroneous recording of suggestions during the cross examination of DW1 and such evidence was sought to be corrected upon filing a petition, which was rejected.

Mr. Sagarmoy Ghosh, learned advocate appearing for the opposite parties submits that the prayer for

correction of the evidence of DW1 has been made nine (09) months after the recording of evidence of DW1, and delay not being explained, same should not be entertained.

When it is the only subject of challenge alleging erroneous recording of statement of witness during the cross examination of DW1, the same may be best addressed upon recalling such witness for setting the controversy at rest.

That being the position, that part of the order impugned dealing with rejection of a petition praying for correction of evidence of DW1 is set aside with a direction upon the trial Court to hear out the relevant petition filed by the petitioner afresh in accordance with law.

This would not, however, prevent the Court below to decide the alleged controversy, referred hereinabove upon recalling DW1 in accordance with law.

Since evidence has already been recorded so far as DW1 is concerned, and whose evidence is submitted to have been erroneously recorded during his cross examination, as referred hereinabove, this Court is of the view that though there is a provisions available under Order 18 Rule 3A CPC, for seeking leave of Court, but the same should not be critically viewed at this moment giving precedence to technicality, because the

evidence has already been collected together with the cross examination of DW1.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)