

19.04.2022
16
ct. no. 7
sb

**C.O 843 of 2022
(Physical Hearing)**

**Kaushik Chakraborty & Anr.
-vs-
Sri Tarun Kumar Sashmal**

Mr. S.A.Moqued,
Mr. Numan Shah
Mrs. Arzun Nahar

...for the petitioners

Mr. S.P. Mukherjee
Mr. Shuvajit Bose ...for the Opposite party

The subject matter of challenge in this revisional application is against the refusal to grant any adjournment on the prayer of the petitioners/defendants.

Learned advocate appearing for the petitioners submits that upon furnishing some medical documents, an adjournment was proposed by the petitioners/defendants for her serious illness. The court below by the impugned order rejected the prayer for adjournment disclosing the reasons mentioned therein. It is contended that the extent of sufferings of defendants, sought to be examined as DW-2, could not be appreciated by the court below, and as such, there has been rejection

of the prayer for adjournment causing serious prejudice to petitioners.

Per contra, Mr. Mukherjee, learned advocate appearing for the plaintiff/opposite party submits at the very threshold of this case that the impugned order has already been recalled by a subsequent order dated 7th April, 2022 thereby providing an opportunity to adduce evidence by the defendants as last chance.

According to Mr. Mukherjee, in view of such opportunity being granted, there is nothing left to be adjudicated upon by this court.

Certified copy of the order dated 7th April, 2022 is furnished by the learned advocate for the opposite party. Let the same be taken on record.

In reply to the submission of Mr. Mukherjee, learned advocate appearing for the petitioners proposes to grant liberty so that the examination of DW-2 may be conducted by commission upon due appreciation of extent of illness suffered at this moment.

When an opportunity has already been granted to the petitioners to adduce evidence, the prayer for examination of DW-2 on commission being a subject of decision of trial court, this Court should not grant any liberty encroaching upon the discretion of trial court on such issue.

The petitioners, however, may take resort to the appropriate provision of law, and for which no liberty is required to be given by this Court.

With these directions and observations, this revisional application stands disposed of.

Urgent photostat certified copy of this order duly applied for, be given to the parties upon compliance of all requisite formalities.

(Subhasis Dasgupta, J.)