

11.05.2022
sl No. 9
court no. 7
sk

C.O. 1039 of 2022
Chatra Players Association
Vs
Swapan Kumar Nandi

Mr. Samiran Mandal
Mr. Abhinaba Dan
...for the plaintiffs/petitioners.

Mr. Ram Prakash Banerjee
Mr. S.N. Chattopadhyay
Mr. Debjyoti Ghosh
...for the opposite party.

The subject matter of challenge in this revisional application is against the order dated 4th March, 2022 passed by the learned Civil Judge (Junior Division), Additional Court, Hooghly in Title Suit No. 217 of 2008, which was renumbered as Title Suit No. 236 of 2014, closing the evidence of PW-5 simultaneous with rejection of a petition filed by the petitioner under Order 26, Rule 1 CPC, for examination of witnesses by the deposition commission.

Mr. Samiran Mandal, learned advocate appearing for the petitioners/plaintiffs, upon advertng to order dated 30th September, 2021 passed by this Court in C.O. 792 of 2021, submits that PW-5 was permitted to adduce her evidence on 25th November, 2021, and in the event of non-conclusion of her evidence-in-chief on the said date, her evidence

would be closed. It is contended by the learned advocate for the petitioner that being emboldened by such order, PW-5 was examined on the date stipulated, and after the evidence-in-chief of PW-5, defendant deliberately refused to further cross-examine the PW-5. Since there was deliberate refusal of cross-examination in respect of PW-5, by the learned advocate for the defendant, the court below under an erroneous approach closed the evidence of PW-5, and even rejected the prayer for examination of some other witnesses by deposition commission in application of the provisions available under Section 26(1) CPC.

It is also contended by the learned advocate for the petitioner that by reason of closure of PW-5 together with rejection of petition, for examination of witnesses by deposition commission, petitioners have been made to suffer serious prejudice, and they have been deprived of producing required witnesses to unfold the version, as set out in the plaint, for the desired purpose.

Incidentally, learned advocate for the petitioners submits that the petitioners have two more witnesses still left examined, apart from

cross-examination of PW-5, which is lying deferred. He, however, candidly submits that he would, however, surrender the right of plaintiffs to examine those two remaining witnesses in aid of application under Section 26(1), Rule 1 CPC.

Mr. Ram Prakash Banerjee, learned advocate appearing for the defendant/opposite party/cavetor submits that the entire approach of the petitioners is highly harrasive and their purpose is to get the suit protracted.

It is contended by the opposite party that the directions, given in C.O. 792 of 2021, even could not be complied in true terms, and as a result of which the Court has rightly rejected the closure of evidence of PW-5 together with rejection of a prayer for examination of witnesses by appointing deposition commissioner.

Taking such grounds, learned advocate appearing for the opposite party submits that the impugned order does not call for any interference.

Having considered the submissions of both sides, it appears that PW-5 was permitted to be examined on the date, as stipulated in the order dated 30th September, 2021, passed in CO 792 of 2021. There may be some little departure to ensure compliance with the order, but for which the plaintiff

should not be made to suffer deprivation in respect of their valuable rights to adduce best possible witnesses for desired purpose.

As regards production of witnesses, favourable to their purpose, in terms of the averments, set out in the plaint. When learned advocate for the petitioner candidly abandons the claim of plaintiffs as regards examination of remaining of two witnesses by the deposition commission, this court finds sufficient grounds to give an opportunity afresh to produce those two witnesses still left un-examined, after conclusion of cross-examination of PW-5, which is lying deferred.

That being the position, the impugned order dated 4th March, 2022, passed by the learned Civil Judge (Junior Division), Additional Court, Hooghly in Title Suit No. 236 of 2014 is set aside, giving liberty upon petitioner to produce PW-5 on the date, to be suitably fixed by the learned court below within three weeks from the date of communication of this order, for his cross-examination, and after his cross-examination in full, the other two witnesses, still left un-examined may be produced on two consecutive dates, to be fixed thereafter by the learned court below.

This would not, however, prevent the court below to ensure expeditious disposal of the suit providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is un-avoidable.

Learned advocate appearing for the opposite party is requested to ensure co-operation with the court below, so that logical conclusion of the case may be reached at an early date, with examination of witnesses, that may be needed to set up the defence for the defendants.

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

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Subhasis Dasgupta J.)