

17.05.2022
Item No.18
Ct. No.7
CHC
(disposed of)

C.O.1104 of 2022

**Sikender Ali & anr.
Vs.
Ajoy Kumar Sinha**

Ms. Hashnuhana Chakraborty,
Mr. Vinay Kumar Purohit
...for the petitioners

Mrs. Shohini Chakraborty,
Mr. Nayeemuddin Munshi,
Mr. Sukhchand Mitra,
Mr. Munshi Ashiq Elahi,
Mr. Md. Sahidullah Mridha
...for the opposite party

The subject-matter of challenge in this revisional application is against the order dated 21st March, 2022, passed by learned Judge, 5th Bench, Small Causes Court, at Calcutta, in Ejectment Suit No.78 of 2008, rejecting the petition under Order 18 Rule 17 C.P.C., for recalling P.W.1 for the purpose of further cross-examination, in terms of the questions, mentioned in the petition filed by the petitioners/defendants.

Admittedly, Ejectment Suit was instituted in the year 2008 taking the grounds of defaulter, reasonable requirement etc. as available under Section 6 of the W.B.P.T. Act.

Further admitted position is that the opposite party/plaintiff has adduced his witness P.W.1 long before, and his evidence was completed in the year 2019, after his extensive cross-examination on three dates. The second witness adduced by the plaintiff was also examined, and completed in 2021.

Learned advocate appearing for the petitioners upon referring paragraph-‘4’ of the application under Order 18 Rule 17 C.P.C. submits that the questions, sought to be put to P.W.1 in the form of cross-examination upon his recall is relatable to gathering knowledge of petitioners, subsequent to the completion of cross-examination of P.W.1.

It submitted further by the petitioners/defendants that after completion of cross-examination of P.W.1, petitioners gathered knowledge that the plaintiff/opposite party/landlord had already obtained possession of one shoproom on the ground floor, one flat on the first floor, one flat on the third floor of the suit building. The opposite party/plaintiff after obtaining possession from the tenants, inducted new tenants. Since the gathering of knowledge over such possession of some rooms by the plaintiffs was subsequent to the cross-examination of P.W.1, some questions, as mentioned in the application under Order 18 Rule 17 C.P.C., were felt necessary to be put in cross-examination of P.W.1, for the fair adjudication

of eviction suit, based on reasonable requirement with others.

Disputing with the contention of petitioners, Mr. Shohini Chakraborty learned advocate, upon receiving copy of this application supplied today in Court, strenuously argues that it is highly purposive application, intended to cause delay to the disposal of the suit. More so, the date of gathering knowledge, as to the recovery of possession of some rooms by the plaintiff/opposite party could not be disclosed in the application for recall under Order 18 Rule 17 C.P.C., without which, the application for recall was rightly rejected.

It is also contended by Mrs. Chakraborty that P.W.1 was subjected to cross-examination on as many as three dates.

As per submission disclosed by the parties, it appears that admittedly suit is for eviction taking the ground of reasonable requirement and others as available under Section 6 of the W.B.P.T. Act.

True it is, that the relevant date relatable to the averments contained in paragraph-4 of application under Order 18 Rule 17 C.P.C. could not be disclosed therein, but upon viewing the scheme of questions, sought to be put in cross-examination to P.W.1 upon recall, it appears that it is relatable to the issue

pertaining to reasonable requirement, which is one of the grounds for eviction.

It is also true that P.W.1 was subjected to extensive cross-examination on three dates, and the instant application has been filed long after the cross-examination of P.W.1 was concluded in 2019. It is gathered knowledge that today is the date fixed for adducing evidence by defendants, but taking the ground of pendency of this revisional application before this Court, no witness could be examined today before the court below. It shows the conduct of the defendants, which is basically to cause delay to the disposal of the case. Such conduct, needs to be dealt with strictly upon saddling compensatory costs for the harassment and undue hardship caused to the plaintiff/opposite party, for such belated filing of the instant application under Order 18 Rule 17 C.P.C..

However, when questions sought to be put in to P.W.1 in the cross-examination has some direct relevance to the issue of reasonable requirement, the Court is of the view that by putting such questions to P.W.1 in the form of cross-examination upon recall, would not cause any prejudice to plaintiff/opposite party.

The prayer for recalling of P.W.1 for his cross-examination in terms of the questions, already set out in application under Order 18 Rule 17 C.P.C. is

allowed upon setting aside the order dated 21st March, 2022, rejecting the application under Order 18 Rule 17 C.P.C. with costs of Rs.12,000/-.

Learned Judge, 5th Bench, Small Causes Court, at Calcutta, in Ejectment Suit No.78 of 2008 is directed to fix a reasonable suitable date within three weeks from the date of communication of this order for the cross-examination of P.W.1 upon recall under Order 18 Rule 17 C.P.C, subsequent to the deposit of costs as above, to be made within fortnight from hence.

It is, however, clarified that since the eviction suit was instituted in the year 2008, the learned court below is requested to fix consecutive dates for the examination of witnesses for petitioners/defendants within six weeks after completion of the proposed cross-examination of P.W.1, and deliver logical conclusion of the suit thereafter providing an opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

The suit may be expeditiously disposed of preferably within a period of ten (10) weeks from the date of communication of this order upon taking all such exercise as mentioned hereinabove.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)