

18.01.2022  
Ct. 21  
D/L 28 & 29

**C.O. No. 1165 of 2021**

**With**

**C.O. No. 1168 of 2021**

**Debjit Guha**

**-Vs-**

**Reena Guha (Roy)**

**(Via Video Conference)**

Mr. Satakshi Sengupta

... for the petitioner

Ms. Shohini Chakraborty

....for the opposite party

The petitioner Debjit Guha being aggrieved by the order of rejection of his adjournment petition and closing the further cross-examinations of opposite party/P.W.1 and fixing case for D.W. passed by Additional District Judge, 13<sup>th</sup> Court, Alipore in MAT Suit No. 16 of 2019 on 21.01.2021 and subsequently rejection order of his application for recall of the order dated 21.01.2021 passed on 05.04.2021 have preferred revisional application being nos. 1168 of 2021 and 1165 of 2021.

The facts of the case in gist are that the opposite party herein being the wife has filed a Matrimonial Suit for dissolution of marriage against the petitioner husband in the year 2019. The case was fixed for further evidence of the wife/petitioner when a fire incident which took place in Court No. 13 on 14.07.2020. The entire record of the MAT Suit No. 16 of 2019 was destroyed. Subsequently, the record was reconstructed and matter was fixed for further cross-examination of P.W. 1 on 21.01.2021. On that day the husband by filling a petition has prayed for adjournment and which the learned Court below was pleased to reject for not being moved and also considering the fact for cross-examination of P.W. 1, the O.P. husband had already sought adjournment on 6 occasions in between 21.09.2019 till 17.02.2020. Thereby, fixed the case for D.W.

By filling another petition on 25.02.2021 the O.P. husband has prayed for recall of the order dated 21.01.2021 and prayed for permitting him to grant an opportunity for further cross-examination of the plaintiff wife and which was rejected by the learned Court below by passing the order dated 05.04.2021.

Learned Advocate for the husband/petitioner submits that without giving an opportunity to complete cross-examination of P.W. 1 the learned Court below closed her evidence and fixed the case for D.W. and

thereby caused prejudice to the interest of the husband and when the husband was not present in the Court and that too immediate after re-construction of the record. Therefore, he prays that impugned orders may be set aside and remand the case to the learned Court below with a direction to permit the petitioner to complete the further cross-examination of the P.W. 1 by granting just 30 minutes time, otherwise the interest of the petitioner would be prejudiced and he would not be able to cross-examine the P.W. 1 on vital issue.

To such submission learned Advocate for the wife submits that the husband is not diligent in conducting the hearing of the case and as the husband has the habit of seeking adjournments. He had sought 6 dates for cross-examination of P.W. 1 in between 21.09.2019 to 17.02.2020 and still failed to complete the cross-examination. However, learned Advocate for the opposite party herein submits that she has no objection if the case is remanded back to the learned Court below on payment of exemplary cost and with a direction to complete the further cross-examination of P.W. 1 within a day by the petitioner and with further direction to the learned Court below for expeditious disposal of the case.

No objection is raised by learned Advocate for the petitioner on such submission made by learned Advocate for the opposite party herein.

This Court is also of view in the interest of justice an opportunity need to be given to the petitioner herein to complete the cross-examination of P.W. 1 as it is seen that P.W.1 has already been cross-examined by the petitioner.

Therefore, both the impugned orders dated 21.01.2021 and 05.04.2021 are hereby set aside but on payment of exemplary cost of Rs. 5000/- to the opposite party within a week from the date hereof.

The petitioner is given an opportunity to cross-examine the P.W. 1 and complete the same on a single day that is on 10.02.2022.

The learned Court below is directed to dispose of the MAT Suit No. 16 of 2019 within the month of March and without granting any adjournment whatsoever to either of the parties.

Accordingly, **C.O. No. 1165 of 2021 with C.O. No. 1168 of 2021 is disposed of.** Connected applications, if any, are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Kesang Doma Bhutia, J.)**