

25.07.2022
Item No.1
Ct. No.7
CHC
(disposed of)

C.O.1553 of 2022

Sri Sambhudas Chaudhury
Vs.
Sri Shamik Chaudhury & ors.

Mrs. Sohini Chakraborty,
Mr. Koushik Chowdhury,
Mr. Ishan Bhattacharya
...for the petitioner

Mrs. Pampa Dey (Dhabal)
...for the opposite party no.1

The subject-matter of challenge in this revisional application is against the order dated 6th May, 2022, passed by learned Civil Judge (Junior Division), Third Court, Alipore, South 24 Parganas, in Title Suit No.1583 of 2019, rejecting an application under Order 18 Rule 16 sub-clause (1) C.P.C., thereby declining to examine the petitioner, being defendant no.1 immediately for the reasons set out in the petition.

Admittedly, this is a suit for cancellation of a deed of gift, stated to have been executed by petitioner/defendant no.1/father in favour of his younger son and daughter-in-law (defendant nos.2 and 3 respectively). The present suit without any controversy has been filed by elder son impleading father petitioner/defendant no.1, and his younger brother, and his wife. This is also admitted fact that

the written statement has already been filed by the defendants contesting the suit.

According to Mr. Chakraborty, learned court below has not appropriately gone into the health condition of the petitioner/defendant no.1, who was about 86 years old having several ailments, and it was supported by certificate issued by a doctor.

It is, thus, contended by Mrs. Chakraborty that the certificate annexed with the instant petition under Order 18 Rule 16(1) could not be taken into account, and as a result of which, there has been improper rejection of the prayer under Order 18 Rule 16(1) of C.P.C. making infraction of the provisions of the law.

Per contra, Mrs. Pampa Dey (Dhabal), learned advocate appearing for the opposite party no.1 submits that though a certificate has been submitted by the petitioner, but no medical documents however, could be produced to reveal the extent of the ailments suffered by the petitioner/defendant no.1. The certificate enclosed with the prayer under Order 18 Rule 16(1) C.P.C. reveals that petitioner is 86 years old having age old ailments.

There is a provision engrafted under Order 18 Rule 16 sub-clause (1) C.P.C., wherein court has been left with the discretion to examine witness immediately for the circumstances mentioned therein. It would be

profitable here to quote the provisions of Order 18 Rule 16 (1) C.P.C, which may be mentioned as hereunder:-

“Order 18 Rule 16(1):- *Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.”*

This is a case wherein the relationship between the plaintiff and the defendant no.1 is that of son and father. Undenying position is that the petitioner/defendant no.1 has become age old, and having several age old related ailments. He is octogenarian. The reasons set out in Order 18 Rule 16(1) C.P.C. providing discretion to the Court to examine witness immediately are where witness is about to leave the jurisdiction of the court, or other sufficient cause is shown to the satisfaction of the court, when the evidence should be taken immediately.

This is a case admittedly there is no chance of leaving the jurisdiction of the Court by petitioner/defendant no.1. The reasons set out in the petition under Order 18 Rule 16(1) C.P.C. being supported by a certificate issued by registered medical practitioner essentially come within the meaning of

“other sufficient cause” as appearing in Order 18 Rule 16(1) C.P.C. The discretion thus exercised by the court below has not been appropriately exercised judicially.

That being the position, no further elaboration is necessary. The revisional application, is, thus, disposed of upon setting aside the order dated 6th May, 2022, passed in Title Suit No.1583 of 2019 by learned Civil Judge (Junior Division), Third Court, at Alipore, South 24 Parganas, with a direction upon the court below to collect the evidence of petitioner/defendant no.1, preferably within a period of fortnight from the date of communication of this order, after issuing notice to the opposite parties/plaintiffs, and if necessary, upon preponing the date taking advantage of this order.

This would not, however, prevent the opposite parties/plaintiffs to challenge the veracity of the evidence, to be adduced by petitioner/defendant no.1 from subjecting him to required cross-examination in accordance with the law.

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.)

