

11.02.2022
Ct. 21
D/L 10
Ali

C.O. 1511 of 2021
(Via Video Conference)

Sital Chandra Ghorai
-Vs-
Anil Kumar Ghorai & Anr.

Ms. Moumita Ghosh,

... for the petitioner

The petitioner being aggrieved by the manner in which his entire evidence was struck off from the record by Learned Civil Judge (Jr. Div.) Additional Court Tamluk in Title Suit no. 1 of 2018 on 27.8.2018 and rejection of his application dated 1.10.2018 for setting aside the noting to that effect in his evidence recorded on 27.8.2018 has filed the present application under Article 227 of the Constitution.

Perused the record from where it is seen, the learned Court below during cross- examination of the present petitioner as OPW no. 1 appears to have expunged/ struck off his entire evidence recorded by it on 7.8.2018 with the observation “from demeanour of the witness that either the witness is withholding the information from the Court or refusing to answer the

questions, therefore his deposition is struck out from the record”.

Then opposite party/ present petitioner by filing an application has prayed for setting aside the observation made in para 39 of his evidence in cross. However, the learned Court below by passing the impugned order dated 6.4.2021 rejected the application.

Let see whether the learned Court below is justified in expunging the evidence of OPW 1 just because he refused to give answer to the question put to him during cross examination?

The answer is **“no”** as there is absolutely no provision to discard a piece of evidence which has been recorded. As per provisions of Order 18 Rule 12 CPC, the Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination but it cannot expunge or struck off the evidence which have been recorded by the Court under the oath. The Court has ample power not to take into consideration the evidence which is found to be deficient at the time of writing of the judgement but it cannot expunge the evidence as a whole recorded by it in the open Court as any portion of the evidence may be relevant and sufficient to prove the case of the plaintiff or the defence of the defendant merely on the ground of demeanour of the witness.

The order impugned being illegal and passed without jurisdiction is hereby set aside. Consequently paragraph 39 of the evidence of OPW 1 stands struck off. The learned Court below is directed to complete the cross- examination of OPW no.1 and proceed further with the case which is pending since long and dispose of the same preferably within six months from the date of communication of this order and without granting any adjournment to the parties on whatsoever ground.

Accordingly, **C. O. 1511 of 2021 is allowed.**

Interim order, if any, stands discharged.

There will be no order as to costs.

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.**)