

07.11.2022
Item No.9
Ct. No.7
CHC
(disposed of)

C.O.2142 of 2022

**Murarilal Yadav @ Murari Prasad Yadav
Vs.
Sundar Gupta**

Mr. Vinay Kumar Purohit
...for the petitioner

Mr. Ashok Gupta,
Mr. Sailesh Gupta,
Ms. Roshni Gupta
...for the opposite party

Subject-matter of challenge in this case is against the order dated 28th June, 2022, passed by learned Judge, 12th Bench, City Civil Court, at Calcutta, in Title Suit No.1174 of 1998, allowing an application under Section 151 C.P.C. thereby permitting examination in chief to be resumed on the strength of affidavit-in-chief of a witness.

Mr. Vinay Kumar Purohit, learned advocate appearing for the petitioner assails the impugned order on three grounds principally; firstly, the application under Section 151 C.P.C. has been filed at a belated stage even after closure of the evidence of plaintiff long before. The second ground is that the purpose of filing this application is to fill the lacuna revealed during cross-examination of the plaintiff's witnesses, and the third ground is that affidavit-in-chief of the proposed

witness may not be permitted to be filed without summoning him, if at all required.

Upon referring such grounds, learned advocate appearing for the petitioner submits that the suit was filed twenty (20) years before, and the closure of the evidence of the plaintiff witness was occasioned two years before. It is at the belated stage, for a designedful purpose to fill up the lacuna in the evidence, the instant petition has been filed, which is nothing but purely purposive one, and dilatory one.

Mr. Ashok Gupta, learned advocate appearing for the opposite party/plaintiff submits that though there has been some delay caused in examining the proposed witness, but due to intervention of the Covid such application could not be made earlier.

According to the opposite party, the witness proposed to be examined is very important, and his testimony may unfold the controversy surfaced between the parties.

It is thus submitted by the opposite party that unless the witness is permitted to be examined even at the belated stage, there may be prejudice caused to the plaintiff to establish the plaintiff's case with sufficient and appropriate witnesses.

Having considered the submission of both sides, it appears that belated prayer for examination of witness from the side of the plaintiff, even after closure of the

evidence two years before, the problem has cropped up permitting the petitioner/defendant to file the revisional application. The fundamental thrust of the petitioner in the instant revisional application is against the exercise undertaken for filling up the lacuna, revealed during the cross-examination of the plaintiff's witness, which should be checked with high hands.

It is also submitted that there would be sufficient harassment caused to the petitioner by the belated examination of such witness, as evidence of a witness has already been closed, and suit has been posted for argument.

True it is, that the plaintiff/opposite party has proposed for examination of a witness at a belated stage even after closure of the evidence, but that prayer for examination of witness should not be refused merely for the delay caused. The harassment, if there be any, likely to be caused thereby, may be redressed to the petitioner upon saddling some cost.

The impugned order allowing application under Section 151 C.P.C. is thus modified with a cost of Rs.10,000/- (Rupees Ten Thousand only), to be paid by opposite party within the fortnight from the date of communication of this order to the court below. The proposed witness sought to be examined, may be examined either on the schedule date, or if for any

reasons whatsoever, the same could not be done, the examination of the such new proposed witness may be concluded within fortnight thereafter, without granting any unnecessary adjournment, unless it is extremely unavoidable.

It is, however, clarified that defendant is at liberty to adduce any further witness, if necessary to set up appropriate defence of the defendant, if at all required.

It goes without saying that the right of examination of the petitioner/defendant should not be restricted in any manner whatsoever, so that the veracity of the statement of proposed witness may be appropriately testified in accordance with the law.

This court reposes trust and confidence upon the court below that the logical conclusion of the suit may be reached, preferably within the end of March, 2023.

Parties are directed to make communication of this order to the court below.

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.)