

28.11.2022
Item No.3
Ct. No.7
CHC
(disposed of)

C.O.2155 of 2022

Sk. Abdul Khaleque & ors.
Vs.
Sk. Ibrahim Mahammad & anr.

Mr. Masad Karim,
Mrs. Chandana Natua
...for the petitioners

Mr. Asish Chandra Bagchi,
Ms. Malyasree Maity
...for the opposite parties

The subject-matter of challenge in this case is against the order dated 12th July, 2022, passed in Suit No.70 of 2016 of Waqf Tribunal, West Bengal, rejecting the application, filed by the petitioners under Order 11 Rule 14 read with Rule 15 C.P.C. for production of document disclosed in the petition itself.

Mr. Karim, learned advocate appearing for the petitioners draws attention of the court to order passed in C.O.1970 of 2018, to submit that there has been a specific direction upon both the parties to complete inspection and discovery within a week from date of order (12.03.2019), and after completion of discovery and inspection, the issues are supposed to be framed by the West Bengal Waqf Tribunal within a week thereafter, of which first issue would be as to whether the said property was Waqf property or not.

Mr. Karim argues that admittedly, petitioners being defendants filed one petition under Order 7 Rule 11 C.P.C. praying for rejection of a plaint, which was rejected by the court below. Such rejection order was under challenge in C.O.1970 of 2018, which was disposed of giving some directions, mentioned above.

As regards conclusion of the trial of the instant suit, there was a further direction to take up the suit on day to day basis.

Mr. Masud, further argues that the instant suit was instituted for declaration, recovery of possession, damage and permanent (mandatory) injunction, in respect of some suit property describing the same to be Waqf property. The fundamental challenge against such proposed declaration is that the suit property, described to be Waqf property is not a Waqf property. It is rather individual property, with a mark of distinction of absence any independent dedication by any dedicator of the property, if there be any.

The contention raised by the petitioners is that in spite of direction to complete the discovery, inspection upon supplying a documents, relied upon by the plaintiffs, the relevant documents, being relied upon, could not be supplied to the petitioners, resulting in serious prejudice caused to defendants/petitioners to put up their best possible defence in the pending litigation.

Adverting to schedule of the petition under Order 11 Rule 14 and 15 of the C.P.C., learned advocate for the petitioners submits that there has been reference of 18 documents, the copy of which ought to have been supplied by the opposite parties, doing adherence to the direction contained in C.O.1970 of 2018.

It is thus submitted by the petitioners that unless such documents are supplied, the suit may not be effectively proceeded further, and the court below has not considered that if there has been adequate adherence to the direction of this Court, regarding compliance to be ensured with regard to discovery and inspection, or not, and mechanically endeavoured to proceed ahead with the suit.

Mr. Bagchi, learned Senior Advocate appearing for the opposite parties disputes with the submission raised by the petitioner replying to the effect that as many as four firisti, mentioning documents together with the copies contained in the firisti, have already been supplied to the petitioners, which could not be taken care of for the reasons best known to the petitioners.

Mr. Bagchi, however, assures this Court that not a single document will be adduced in evidence during trial without letting the other side know about the document, sought to be produced in evidence, and

without supplying a copy of the firsti containing copy of the document, going to be produced during the trial.

According to Mr. Bagchi, to have the desired relief, it is for the plaintiffs/opposite parties to establish their case with sufficient documents, failing which, there is possibility of loosing the legs of the pleadings submitted by the plaintiffs themselves.

Having considered the submission of both sides, it appears that documents going to be relied upon by the plaintiffs are alleged to be not supplied to the petitioners, before tendering the same in evidence, doing adequate adherence to the direction passed by this Court.

That being the only bone of contention between the parties, this Court is of the view that there is hardly any scope for any further elaboration, bearing in mind that there has been a direction earlier passed by this Court requiring the court below to fix consecutive dates for the logical conclusion of the case.

The revisional application stands disposed of directing the petitioners to supply copy of the Firisties containing documents, being relied upon, to the petitioners, and no document may be tendered in evidence without letting the other side know about the endeavour undertaken by the opposite parties to produce the same during trial.

It is, however, further clarified that copy of the firsti together with the copy of the documents already submitted if any in the court below, a copy of which may be supplied to the learned advocate appearing for the in this case for the petitioners, so that the grievance raised by the petitioners, may be adequately redressed.

Mere claim, however, would not prompt the petitioners to cause production of the documents, which are fancy and cosmetic one, not at all relied by the plaintiffs having any reference in the pleadings to that effect.

For the alleged non production of any document, petitioners/defendants, however, may take adequate step in accordance with law for production of the same ,if such documents are at all needed during cross-examination, or even during the time of adducing evidence by the defendants. Therefore, the petitioners are not remediless.

The cost already ordered by the court below need not be deposited, subject to the condition that the opposite parties will ensure their best cooperation, so that logical conclusion of pending litigation may be reached shortly doing strict adherence to the direction already passed by this Court in C.O.1970 of 2018.

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

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.)