

14. 17.02.2022
Ct. No.21
SS

C.O. 1540 of 2020

**Smt. Nayantara Hazra
-Versus-
Sukumar Das**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. R. Ahmed
Mr. Rudranil Das

...for the petitioner

Mr. Mahendra Prasad Gupta
Mr. Ayan Mitra
Ms. Antara Panja

... for the opposite party

Mr. Tanmoy Mukherjee, learned lawyer appears for the petitioner and Mr. Mahendra Prasad Gupta, learned lawyer appears for the opposite party.

This revisional application is taken up for hearing.

Heard learned lawyers for both sides.

The defendant/petitioner being aggrieved by order dated 6th March, 2020 passed by the learned Civil Judge, Junior Division, 7th Court at Howrah in Title Suit No.1093 of 2017 whereby the learned Court below was pleased to reject the defendant's prayer for examination of one Bharati Das, the summoned witness and fixing the case for argument, has preferred this revisional application.

It has been contended by learned lawyer for the petitioner that Bharati Das not being a listed witness and being a summoned witness, there is no need to file her evidence in chief on affidavit as required under Order 18 Rule 4 of the C.P.C., but somehow the defendant has filed her evidence in chief on affidavit on 2.12.2019 and who was also present before the Court to give evidence but learned Court below

fixed next date for recording her evidence and for argument. Unfortunately, Barati Das, the summoned witness was not present on 13.12.2019 and as such case was deferred to 20.12.2019 for recording her evidence i.d. arguments. On 20.12.2019 due to resolution taken by the local Bar Association 'not to attend the courts', the case was again deferred to 21.1.2020. It appears Bharati Das was very much present before the court below to give her evidence on 21.1.2020, but on that date plaintiff had sought adjourned and witness was notified about the next date but thereafter the chief of D.W.2 filed on affidavit was not pressed by the lawyer for the defendant and the case was again fixed for her evidence on 3.2.2020. On 3.2.2020 the defendant had sought adjourned and as such the case was deferred to 12.2.2020 for examination of Bharati Das.

Anyway, I do not find any order sheet after 12.2.2020 till 6.3.2020. However, the impugned order dated 6.3.2020 reflects that the said date was also fixed for evidence of D.W.2 and in default for argument. On that date Bharati Das was present as a summoned witness to give her evidence under oath but it appears learned Court below by passing the impugned order held the defendant cannot be allowed to examine her not being a witness named in the list of witnesses and her evidence in chief being already not pressed on 21.1.2020.

This Court puts a question to itself how the Court below who has fixed the case specifically for recording the evidence of Bharati Das as D.W. 2 on 6.3.2020 could say that she cannot be examined as her name does not appear in the list and her evidence on affidavit was not pressed earlier.

The Hon'ble Supreme Court observed in Salem Advocate Bar Association. T.N. Vs. Union of India, reported in (2003) 1 S.C.C. 49 that there is no need to file affidavit in evidence of a summoned witness as in the case of listed witnesses. In the instant case, Bharati Das appears to be a summoned witness and not a listed witness. So it is not known how the Court below can say that the evidence in chief on affidavit of Bharati Das which was 'not pressed', cannot be allowed to be examined as DW 2 under oath on the date which the Court has fixed the case exclusively for recording the evidence of DW 2 Bharati Das on 06.03.2020.

Therefore, this Court finds that the impugned order suffers from inconsistency, illegality and material irregularity and accordingly, the order impugned passed by the learned Court below is hereby set aside.

The revisional application is disposed of. There will be no order as to costs.

Learned Court below is directed to examine Bharati Das as D.W.2 on 23.2.2022 the day the case is fixed in the Court below and fix the case for hearing argument. The learned Court below is further directed to dispose of the Title Suit No.1093/ 2017 within a period of three months from the date of communication of this order.

The defendant is directed to produce Bharati Das before the Court below on 23.2.2022 and if fails, the learned Court below shall be at liberty to proceed with the hearing of the argument of the case.

Accordingly **C.O. 1540 of 2020 is allowed.**

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.

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.)