

**17.07
2023**

C.O. 58 of 2018

...For the Petitioner

...For the Opposite Party

Service of notice upon the learned Counsel for the

Petitioner states that during trial on 11th December,

On 12th December, 2017 while the PW. 1 was cross

Learned Counsel for the petitioner objected such

attention stating that the documents as aforesaid can not be accepted until and unless the same are submitted by way of supplementary affidavit in Chief. Accordingly, the learned Counsel for the petitioner filed an application for adjournment to prefer revision against the said order but the Trial Judge allowed the said adjournment prayer subject to payment of cost of Rs. 15,000/- with further observation that in default of payment of said cost, the defendant would be debarred to cross-examine the PW. 1 and the next date is fixed for further cross-examination of PW. 1.

Learned Counsel appearing on behalf of the petitioner submits that the Court below erred in law in imposing cost of Rs. 15,000/- and the Court below failed to appreciate that the opposite party herein did not file the partnership deed and registration certificate of the partnership firm at the time of filing of the commercial suit, which is mandatory and in absence of such document the suit cannot be entertained. Learned Court below arbitrarily and illegally marked the said two documents as Exhibit 22 and Exhibit 23 and also illegally imposed cost of Rs. 15,000/- upon the petitioner. Accordingly, the petitioner has prayed for setting aside the order impugned.

Mr. K.C. Garg, learned Counsel appearing on behalf of the opposite party submits that the said two documents were inspected by the defendant / opposite party earlier during discovery and inspection and as such he has not right to raise such question and the Court below rightly marked the said documents as Exhibits and the Court below was justified in imposing cost of Rs. 15,000/- as defendants are reluctant to proceed with the suit.

Order XVIII, Rule 4(1) deals with the

examination-in-Chief of a witness and it provides that examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. Proviso to that section says where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

Party who has examined the witness may seek the Court for conducting further examination-in-chief of the witness. Such further examination-in-chief can be offered by way of additional affidavit. From the aforesaid provision, it is quite clear that the plaintiff / petitioner was supposed to file those documents along with the affidavit-in-chief as evidence. Since they have not done so and they have filed it during cross-examination of PW. 1, so they ought to have filed a supplementary affidavit to that extent in order to reexamine the witness. In such view of the matter, the order impugned calls for interference.

The order impugned dated 12th December, 2017 in connection with the order by which documents were marked as Exhibit 22 and Exhibit 23 and imposing of cost of Rs. 15,000/- for seeking adjournment are thereby set aside.

Plaintiff will be at liberty to file supplementary affidavit along with said documents for tendering before the Court below and in the event of filing such additional evidence the learned Court below after closure of cross-examination of PW-1 by defendant, will give liberty to the plaintiff / petitioner for re-examination of the witness for marking those documents as Exhibits and the Court below will also give liberty to the defendant / opposite party for

further cross-examination, if any and the entire process will be completed within a period of six weeks from the date of communication of this order.

The revisional application, being C.O. 58 of 2018 is thus disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the petitioner, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)