

13. 02. 2023

BP
Sl.30
Court No. 12

CO 772 of 2019

Sri Kalika Prasad Sharma
@ Kalik Prasad Sharma

Vs.

Mr. Rathindra Nath Sinha

Mr. S.N. Dutta
Mr. S.K. Pandey
..for the petitioner

Learned advocate for the petitioner is present and he has handed over an affidavit of service. Let the affidavit of service be taken on record.

None appears on behalf of the opposite party.

In this revisional application as filed under Article 227 of the Constitution of India the Order No. 73 dated 05.01.2019 as passed by the learned Civil Judge (Senior Division), 3rd Court, Alipore in Misc Case No.263 of 2016 has been assailed.

On perusal of the entire materials as placed before this court including the certified copy of the impugned order and after hearing Mr. Dutta, learned advocate for the revisionist, it appears to this court that in a proceeding under Order 9 of the Code of Civil Procedure learned trial court rejected the prayer of the petitioner for granting more time for allowing the

petitioner to tender his son and a doctor witness as witnesses for the petitioner on account of delay as made by the present revisionist before the learned trial court.

Admittedly Misc. Case No. 263 of 2016 is pending for considerable length of time. In view of such, this court while allowing the instant revisional application after setting aside the impugned order directs that the resent revisionist shall have to tender his son as a petitioner witness in Misc Case No. 263 of 2016 within two weeks from the date of communication of this order or any subsequent date or dates as fixed by the learned trial court. It is also made clear that in the event the present petitioner fails to tender his said son namely, Arvind Sharma either on the next date fixed or on any subsequent dates as fixed by the learned trial court, the present revisionist being the petitioner in Misc. Case No. 263 of 2016 shall be debarred from availing the opportunity of tendering evidence by Arvind Sharma as a witness for the petitioner in the aforesaid misc. case.

It is further directed that for tendering the doctor witness as the petitioner's witness in Misc. Case No. 263 of 2016 the present revisionist before the learned trial court shall have to file the necessary requisite for sending the summons to the said doctor

both by the process server of the said court as well as through post also within two weeks from the date of communication of this order.

In the event the said doctor being a prospective witness of the petitioner do not turn up in spite of service, liberty is given to the learned trial court to take recourse to the appropriate law for ensuring attendance of the said doctor as the petitioner's witness.

With the aforementioned observation, the instant revisional application is disposed of. Parties are to act on the server copy of this order.

Urgent photostat certified copy of this order, if applied for, be given on priority basis.

(Partha Sarathi Sen, J.)

