

04.10.2023
Sl. No.28(DL)
srm

C.O. No. 1051 of 2023
Gopal Mondal & Ors.
Versus
Dhirendranath Mondal & Ors.

Mr. Malay Bhattacharyya
...for the Petitioners.

The petitioner has challenged an order dated January 5, 2023 passed by the learned Civil Judge (Senior Division), Bishnupur, in Title Suit No.31 of 2012.

By the order impugned, an application under Order XI Rule 14 read with Order VII Rule 14 of the Code of Civil Procedure was allowed subject to payment of cost of Rs.500/-. It appears that the plaintiff/opposite party No.1 had mentioned a document being '*Bantannama Patra*' for the Bengali year 1355 B.S. corresponding to the year 1948 executed between Ram Saran Mondal, Ram Renu Mondal and Bhuban @ Bhupati Mondal, i.e. predecessor of the plaintiff. The document was a 30-year-old document and there was a presumption under Section 19 of the Indian Evidence Act. Unfortunately, during evidence of PW1 the original could not be traced and the same was found missing. The plaintiff filed an application under Order XVIII Rule 17 read with Section

151 of the Code of Civil Procedure for recall to produce the said document and mark the same. The application was rejected. Thereafter, an application under Order XI Rule 14 of the Code of Civil Procedure was filed by the plaintiff for direction by the court for production of the said document as the document was vital piece of evidence. In the written statement and the cross-examination, the DW Gopal Chandra Mondal admitted the existence of the said '*Bantannama Patra*'. An objection was raised by the defendant and it was further submitted that the documents could not be produced at a stage when the evidence was closed.

Despite having custody of the said document, the plaintiff did not exercise due diligence in filing the '*Bantannama Patra*' at the appropriate time.

The learned court below upon relying on certain decisions found that it was the discretion of the court to recall a witness and call for production of a document which in the opinion of the court was relevant for the purpose of adjudication of the suit. The learned court below found that the '*Bantannama Patra*' of 1355 B.S. was a 30-year-old document and was in the custody of the plaintiff. Thus, for proper adjudication of the suit, the application filed by the plaintiff

under Order XI Rule 4 of the Code of Civil Procedure was allowed.

This Court does not find any reason to interfere with the order impugned. The discretion of the court was exercised upon assigning cogent reasons.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)