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05.06.2023
Court. No. 19
GB

C.O. 1093 of 2023

Surya Deb Lal @ Surya Deo Lal
Vs.
Kartick Chandra Das

*Mr. Arif Ali,
Mr. Subhamoy Patra,
Mr. Taraknath Jaiswal,
Mr. Jitender Das*

...for the Petitioner.

Mr. Tarak Nath Halder

...for the Opposite Party.

The revisional application is directed against the order dated February 20, 2023. The petitioner is a tenant in respect of a property. The petitioner is contesting Ejectment Suit No.29 of 2018.

By the order impugned, the learned Civil Judge (Junior Division), Bidhannagar closed the cross-examination of P.W.2 and discharged the said witness. The learned court refused to adjourn the matter and defer the cross-examination of P.W.2. The ground for refusal was that on various occasions, the petitioner had failed to cross-examine the learned Advocate Commissioner (PW2). The PW2 was discharged. The revisional application has been filed on the ground that the order impugned is unjust and unfair and prejudicial to the right of the petitioner to effectively contest the ejectment suit.

The learned advocate for the petitioner submits that the reason for seeking an adjournment on the date fixed by

the court for cross-examination of P.W.2, was non-availability of the learned Advocate Commissioner's report.

The learned Advocate Commissioner's report was made available to the petitioner later and the petitioner prays that a last chance be given to the petitioner for examination of the learned Advocate Commissioner(P.W.2).

Mr. Halder, learned advocate appearing on behalf of the landlord, vehemently disputes the contention of the petitioner and submits that on various occasions, the learned court had fixed dates for cross-examination of P.W.2. The conduct of the petitioner has been assailed by Mr. Halder and reference has been made to an earlier order passed by this Court in another civil revisional application. It is submitted that even in case of cross-examination of P.W.1, the petitioner had failed on numerous occasions.

Having heard the learned advocates for the respective parties, this Court is of the view that cross-examination of P.W.2, who is the learned Advocate Commissioner, is essential for the purpose of disposal of the ejectment suit. It is also true that a valuable right would be denied to the defendant/petitioner, in case such opportunity is not given. However, the Court cannot be blind to the conduct of the tenant as has been pointed out by Mr. Halder.

Under such circumstances, this Court is of the view that one last opportunity should be given to the tenant/defendant to cross-examine the learned Advocate Commissioner, subject to compensating the landlord. The

Court has been informed that June 16, 2023 had been fixed for arguments in the suit. The order dated February 20, 2023 is set aside. The defendant/tenant/petitioner will be allowed one last opportunity to cross-examine the learned Advocate Commissioner/P.W.2 on the next date fixed, that is, June 16, 2023.

It appears that sufficient delay has been caused by the tenant and five years have passed from filing of the suit. The cross-examination shall commence and be concluded on the same date. Such cross-examination shall be allowed upon the petitioner satisfying the learned court below of payment of Rs.7,000/- as costs to the landlord. In default, the suit may proceed. Such cost shall be paid to Mr. Halder, learned Advocate for the landlord within June 13, 2023. Mr. Halder shall accept the same and grant receipt of having received such payment.

Accordingly, The revisional application is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)