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05.06.2023
Court. No. 19
GB

C.O. 1094 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 petitioner has challenged two orders, that is, order dated July 25, 2022 and order dated November 14, 2022 passed by the learned Civil Judge (Junior Division), Bidhannagar, in Ejectment suit No.29 of 2018. By the order dated July 25, 2022, the cross-examination of the P.W.1 was closed.

According to the petitioner, the order dated July 25, 2022 would cause irreparable loss and injury to the petitioner if the petitioner is not allowed to cross-examine P.W.1 who is the landlord and plaintiff in the said ejectment suit.

It is submitted that the learned advocate was suffering from COVID and was not available for cross-examination of the P.W.1, although the Hon'ble High Court had directed that the cross-examination of P.W.1 should be completed on July 25, 2022.

The next order which has been impugned, is the order dated November 14, 2022 by which the petitioner's

application for recalling the order dated July 25, 2022 had been set aside. The challenge is on the ground that without going into the reasons mentioned in the application for recalling of the order dated July 25, 2022, the learned court mechanically rejected the application.

Hence, the petitioner prays for an opportunity to cross-examine the P.W.1 and/or for extension of time to complete the cross-examination of P.W.1 on the same grounds which were stated in the recalling application.

Mr. Halder, learned advocate appearing on behalf of the landlord vehemently opposes the prayer of the petitioner and produces an order passed by this court dated July 12, 2022 in C.O. 2241 of 2021. Mr. Halder submits that a coordinate Bench had directed that the cross-examination be completed on July 25, 2022 and according to Mr. Halder, the learned trial judge could not be faulted for rejecting the prayer for adjournment on the date of cross-examination of P.W.1. It is urged that by closing the cross-examination of the said witness, the learned Trial judge had only complied with the order of the court.

It is true, that the petitioner has not acted diligently. However, it appears that the learned advocate for the petitioner was unwell and was suffering from COVID on the date fixed for cross-examination of the landlord. The petitioner could not reach the court on time due to certain unavoidable reason. It also appears that the application for recalling had categorically narrated the entire facts as to why the cross-examination of the PW1 could not be held on that

day. The prayer for recalling of the order dated July 25, 2022 had been filed with details of the ground for seeking an adjournment on July 25, 2022. The learned court below, without addressing each of the points raised by the petitioner, had rejected the application for recalling, without any reasons. This Court is of the view that reasons should have been supplied by the learned court below.

The High Court had fixed a particular date on which the cross-examination of the P.W.1 should have been completed, i.e., July 25, 2022, in compliance of the order of the High Court and in order to show obedience to the same, the petitioner ought to have made some arrangement so that the cross-examination of the P.W.1 could have been completed as per the direction of the Court. The petitioner failed to do so and this Court cannot delve deeper into the facts, in order to ascertain whether the petitioner was misguided or had misunderstood the order of the Court or had been simply negligent. The reason assigned for failure to cross examine the PW1 is illness of the learned advocate, who was suffering from covid. This is a plausible reason.

Cross-examination of the landlord being an essential part of the trial of the ejectment suit, should be allowed. However, the tenant cannot be allowed to drag the proceeding for an unending period by delaying the suit and by praying for adjournments. It appears from the order sheet supplied by Mr. Halder, that at least on three or four occasions, the petitioner had prayed for adjournment on the dates fixed for cross-examination of P.W.1.

It is now submitted by Mr. Ali that due to improper conduct of the case, the petitioner has obtained a change and new set of advocates have been engaged.

Under such circumstances, this revisional application is disposed of by setting aside the orders dated July 25, 2022 and November 14, 2022. The petitioner shall commence and complete the cross-examination of P.W.1 also on the same date as that of PW2, that is, June 16, 2023. No further extension or adjournment shall be given. The learned court below shall allow such cross-examination of P.W.1 upon payment of cost of Rs.20,000/- apart from Rs.7,000/- that has already been directed to be paid in C.O.1093 of 2023.

Upon satisfying the court that the cost as directed by this Court has been paid to the learned advocate Mr. Halder, learned Advocate for the opposite party, either by cash or by demand draft, the learned court shall allow the cross-examination of P.W.1. Such cost shall be tendered to Mr. Halder within June 13, 2023. Mr. Halder will grant receipt. In default, the suit shall proceed.

This order shall be treated as mandatory in nature and no further extension shall be given to the petitioner.

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

(Shampa Sarkar, J.)