

17.07.2023
Court No. 19
Item no.09
CP

C.O. 1617 of 2022

With

CAN 1 of 2022

Smt. Jayanti Dutta

Vs.

Dilip Kumar Saha

Mr. Anirban Mitra
Mr. Amit Halder
Mr. Amit Roy

...for the Petitioner.

Affidavit of service is taken on record.

Despite service, none appears on behalf of the opposite party.

CAN 1 of 2022 is an application for extension of interim order. As the original application is not traceable, the copies thereof supplied by Mr. Mitra, is taken on record and the same is treated to be the original.

The petitioner has assailed an order dated May 20, 2022, passed by the learned Additional District Judge, Fast Track, 3rd Court, Alipore, South 24 Parganas in Insolvency Case No. 80 of 2018. The learned court below rejected the prayer of the petitioner, for recalling PW-1 for cross-examination and the further prayer made by the petitioner for service of Affidavit-in-chief with all the documents.

The learned advocate for the petitioner submits that the learned court erred in holding that an

application with a prayer for service of the Affidavit-in-chief along with the documents relied upon by the plaintiff, should have been made. In the absence of such prayer, further direction to recall PW-1 for cross-examination could not be issued. The learned Advocate for the petitioner submits that the evidence of the PW-1 was erroneously closed, without giving the defendant an opportunity to cross-examine PW1 and to deal with the Affidavit-in-chief and the documents relied upon by the plaintiff.

Having heard Mr. Mitra, learned advocate for the petitioner, this court finds that Order 18 Rule 4 of the Code mandates that the 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 for evidence.

The order impugned does not state that the affidavit-in-chief was supplied to the petitioner with the documents. The defendant has a right of cross-examination. The court noted such right but held that as the defendant while praying for removal of the suit from the ex parte board, did not specifically contend that the affidavit-in-chief and the documents were not supplied, the subsequent prayer for supply of those documents along with the affidavit-in-chief, could not be entertained.

This court is of the view that the learned Trial Judge has acted illegally and with material irregularity in passing the order impugned. The mandate of law has to be complied with and it was not the duty of the defendant to pray for such affidavit-in-chief and the documents as the law mandates that the same 'shall' be handed over to the opposite party by the party relying on the same.

The order impugned is set aside.

However, as the defendant was not diligent in pursuing the remedy, the defendant shall pay cost of Rs.2000/- to the plaintiff within a period of two weeks from the date of communication of this order.

The learned court is directed to ensure that the affidavit-in-chief and the documents relied upon by the plaintiff are handed over to the learned advocate for the defendant within three weeks, upon the court being satisfied that the cost of Rs.2000/- had been paid to the plaintiff.

The PW – 1 shall be recalled on the date to be fixed by the learned court below and the cross-examination of PW-1 shall be completed on a single day. Thereafter, the suit shall proceed in accordance with law and as expeditiously as possible.

The revisional application is accordingly disposed of.

With the disposal of the revisional application, connected application is also disposed of.

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

(Shampa Sarkar, J.)