

23.06.2023

**CO 2158 of 2019
With
CAN 1 of 2019 (Old CAN No.8950 of 2019)**

**Sri Samar Basu (since deceased)
represented by Smt. Malati Basu & Ors.
Vs.
Sri Bhaskar Sur & Ors.**

Mr. Tanmay Chowdhury
Ms. Ritoprita Ghosh

... .. for the petitioners

Mr. Abhik Sarkar

... .. for the opposite party no.2

Being aggrieved by order dated 18th March, 2019 passed by the learned Civil Judge (Junior Division), Additional Court, Serampore, Hooghly in Title Suit No.30 of 2009, present application under Article 227 of the Constitution of India has been preferred.

This is plaintiff's suit for eviction and recovery of *khas* possession against the defendant in respect of the suit premises. The defendant appeared in the suit and filed written statement and the trial of the suit was continuing. After closure of evidence of the plaintiffs' side, the present petitioner being the DW-1 was partly examined on 24th April, 2017.

The petitioner thereafter became seriously ill and after little bit of recovery, on 1st February, 2019 further examination of chief was held at the behest of the present petitioner. After closure of examination of chief on behalf of the petitioner, the plaintiff started to cross-examine the witness and after cross-examining in part of the present petitioner, further examination was deferred on the basis

of an adjournment petition filed on behalf of the plaintiff and the said petition was allowed and next date was fixed on 21st February, 2019.

On 21st February, 2019 the witness was partly cross-examined and the next date was fixed on 12th March, 2019. Thereafter, the petitioner again became seriously ill and the doctors advised him to take complete rest for a period of three weeks.

On 12th March, 2019 the petitioner sought for an adjournment on the ground of his illness supported by medical papers and the Court below fixed next date for further evidence of D.W. 1 on 18th March, 2019. Since there was no recovery, the petitioner again filed a petition for adjournment on the said date explaining his illness along with medical document as annexure but the learned Court below after considering the prayer of the petitioner and the objection raised by the plaintiffs, was pleased to reject the prayer for adjournment and fixed the case for hearing argument.

The petitioner submits that there was no willful, deliberate or intentional fault on the part of the petitioner to attend the Court on two consecutive dates but his health condition prevented him from appearing before the Court which the Court below did not consider. He further contended that the application for adjournment was supported by medical papers, wherefrom it will reveal that the doctor has advised him to take complete rest for

three weeks, but in spite of perusing such medical papers the Court below fixed the next date within a gap of six days.

The petitioner further submits that considering the health condition including the medical papers, the Court below should not have rejected such prayer for adjournment and closure of evidence at this stage has seriously prejudiced the petitioner. Accordingly, the petitioner has prayed for setting aside the order impugned and to give opportunity to conclude the evidence of defendants' witness.

Learned counsel appearing on behalf of the plaintiffs/opposite parties raised strong objection contending that the order itself clearly depicts that a series of adjournments had taken by the defendant/tenant/petitioner and the delay caused by the petitioner was intentional and deliberate and to cause delay in disposal of the case and as such the Court below after giving sufficient opportunities to the witness to appear before the Court, had ultimately rejected the said prayer for adjournment, finding that the defendant has no intention to bring himself as witness any further before the Court. Considering the same, the order impugned does not call for interference.

I have considered the submissions made by both the parties.

On perusal of the order impugned it appears that such suit had been fixed for evidence of defence witness on 20th June, 2015 and since then on account of several adjournment petitions, trial halted considerably for so many years. It is most unfortunate part that the evidence of defendant which started on 20th June, 2015 could not be completed even on 18.03.2019. Though the circumstance is not very convincing and blameworthy and a ridiculous situation has arisen in the name of trial where evidence of a single witness could not be completed within a period of about four years and practically trial has become mockery with the Court but considering the facts and circumstances of the case and for the interest of justice, I am inclined to give one more opportunity to the defendant's witness(es) to conclude his evidence within certain time frame subject to payment of costs.

C.O. 2158 of 2019 is accordingly allowed subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) by the defendant/petitioner to the opposite parties /plaintiffs within a period of 14 days from the date of communication of the order.

On such payment the Court below is directed to conclude the defendant's evidence within a period of four weeks from the date of communication of the order and if required by conducting day to day trial, without granting any unnecessary adjournment to either of the parties and

to dispose of the suit within a period of two months from the date of communication of this order.

If the defendant fails to pay the costs or to produce the witness on the date fixed by Court below to enable the Court below to conclude evidence within the aforesaid time frame, the order impugned shall revive.

Interim order, if an, stands vacated.

Accordingly, CAN 1 of 2019 (Old CAN No.8950 of 2019) is disposed of.

(Ajoy Kumar Mukherjee, J.)