

28.02.2023
SL No.8
Court No. 654
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

C.O. 1859 of 2022

**Kohinoor Chakraborty
Vs.
Bhaswati Chatterjee & Anr.**

Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Abhirup Halder,
Mr. Anirban Saha Ray
.....for the petitioner.

This revisional application under Article 227 of the Constitution of India arises out of Order No.47 dated 19th April 2022 passed by learned Additional District Judge, Fast Track, 1st Court, at Howrah in Probate Suit No. 51 of 2016 allowing the prayer of opposite party no.2 for recalling of PW1 for further cross-examination under Order 18 Rule 17 of the Civil Procedure Code.

Mr Sounak Bhattacharya, learned advocate for the petitioner submits that provision under order 18 Rule 17 of the Code is a discretionary power given to the Court for clarification and removal of doubts by recalling a witness. However, the application for recall of PW1 filed by opposite party no.2, Kaustav Chakraborty was allowed by the learned trial court without any reasonable grounds whatsoever. He also draws attention of the court to the fact that no proposed set of questions were annexed to the application for recall. In light of his

aforesaid submissions he prays that the impugned order under challenge passed by the learned trial court be set aside.

Affidavit of service filed by the petitioner on 23rd November, 2022 shows that the copy of this revisional application has been served upon learned advocate on record for the opposite party No. 2 before the trial court.

None appears on behalf of opposite party no. 2, Kaustav Chakraborty.

Having heard the learned advocate for the petitioner, it is found that the petitioner has raised the issue as to whether the learned trial court was justified in allowing the prayer of opposite party no. 2 for recall for cross-examination of PW-1.

In order to appreciate the issue raised by the petitioner it would be apposite to reproduce the relevant provision under Order 18 Rule 17 of the Code which reads hereunder:

“17. Court may recall and examine witness.-The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit”.

Bearing in mind the above, upon perusal of the application for recall under Order 18 Rule 17 of the Code, save and except that since new advocate was appointed on behalf of the opposite party no. 2,

Kaustav Chakraborty there is necessity of cross examination of PW-1 there is no other grounds made to suggest that such recall of witness was for clarification or removal of any doubt. It is pertinent to note that no schedule of questions is annexed to the application for recall to precisely ascertain the nature of clarification. The learned trial court allowed the application for recall considering the ground that a new learned advocate has opined that some aspects were left out in cross-examination of PW-1. It is trite law that power under Order 18 Rule 17 is only for clarification i.e. to enable court to clarify any issue or doubt it may have in regard to evidence led by parties by recalling any witness so that the court itself can put questions to such witness and illicit answers. The provision is not intended to be used to fill up omissions in evidence of a witness who has already been examined. In the aforesaid backdrop since the learned trial court has not indicated any sort of clarification or doubt for recalling the witness (PW-1) the order directing for recall of PW-1 is liable to be set aside.

In view of the above discussions, the impugned order under challenge is set aside.

The revisional application being C.O. 1859 of 2022 is allowed.

All connected applications if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent photostat certified copy of this order
if applied for the given to the parties upon
compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)