

04.07.2023
Court No.19
Item no.15
CP

C.O. 1935 of 2023

Abbas Abdeali Morudwala
Vs.
Bhola Nath Kundu

Mr. Pradeep Kumar
Ms. Shreya Trivedi

....for the petitioner.

Mr. Abhijit Ray
Mr. Santu Nandy

....for the opposite party.

The petitioner is the defendant in a suit for ejectment. The petitioner is aggrieved by an order passed by the learned Judge, 2nd Bench, Presidency Small Causes Court dated May 17, 2023. On May 17, 2023, the learned court below found that the defendant did not pay the cost and, hence, did not allow further cross-examination of PW-1. The learned court fixed the suit for arguments.

This court finds that the learned court below erred on the following grounds:

- a) May 17, 2023 was fixed for payment of cost positively, but without waiting for evidence of payment of cost on that date, the court took up the matter, refused to recall the earlier order of closing the evidence of PW-1 and fixed the suit for arguments.

- b) Opportunity to adduce evidence on behalf of the defendant was not given.

Having heard learned counsel for the respective parties, this court is of the view that a last chance should be given to the defendant to cross-examine PW and adduce evidence as DW upon payment of the cost as directed by the learned court below.

It is informed that July 11, 2023 is the next date fixed in the suit. The order impugned dated May 17, 2023 is modified to the following extent:

- a) Within July 10, 2023, cost of Rs.10,000/- should be paid either directly to the plaintiff or to the learned advocate-on-record for the plaintiff, Mr. Santu Nandy.
- b) The plaintiff or Mr. Santu Nandy, learned advocate, as the case may be, shall issue receipt. Such receipt shall be produced before the learned court below by the defendant on July 11, 2023.
- c) The court, upon being satisfied that such amount had been paid, shall allow the defendant to cross examine PW-1. Cross examination of PW-1 shall be completed within the said date. The PW-1 shall be present in court.

- d) In case of default, no further chance shall be given to the petitioner. After completion of the cross-examination of PW-1, DWs shall adduce evidence. The evidence of DWs should be completed within three days.
- e) Dates shall be fixed in short intervals by the learned court as the plaintiff is 80 years old and is pursuing the eviction suit since 2017.

The revisional application is accordingly disposed of. The order impugned is set aside.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)