

August 24, 2023
Sl. No.19
Court No.19
s.biswas

CO 2498 of 2023

Smt. Nilima Saha and others
vs.
Narayan Chandra Saha and another

Mr. Abhijit Roy
Mr. Tanmay Dey
Mr. Sayan Sinha
Mr. Nilanjan Bhattacharya

... for the petitioners

Mr. Krishna Das Poddar

... for the opposite party

This revisional application arises out of the order dated July 14, 2023, passed by the learned Judge, 2nd Bench, Presidency Small Causes Court, Calcutta, in Ejectment Suit No.451 of 2015.

The petitioners are the tenants. The application filed by the petitioners under Section 151 of the Code of Civil Procedure was rejected on the ground that the evidence which the petitioners wanted to adduce by recalling DW1, was available with the petitioners since 2022. Nothing prevented the petitioners from coming earlier, before the evidence of DW1 was closed and such prayer was made only to delay the proceedings.

Apart from the said observations, the learned court below did not record any other ground for rejection. Whether the contentions of the petitioners with regard to the reason for recalling DW1 were justified or not, was not discussed at all.

This court finds that in the written statement, the defendants have stated that the plaintiffs were in the habit of inducting tenants and the ground of reasonable requirement was illusory. New tenancies were created. Even during pendency of the suit, new tenants were inducted. In order to ascertain such fact, information was taken from the State Election Commission and the electoral rolls were obtained to show that very recently tenants had been inducted.

Under such circumstances, this court is of the view that one last chance should be given to the DW1. The probative value of such documents will be gone into at the trial. Needless to mention, if any document is sought to be tendered, the same will be in compliance with the provisions of the Evidence Act.

Learned advocate for the plaintiff submits that the Hon'ble Apex Court had categorically held that the acute problem which was being faced by the judiciary in the justice delivery system, was pendency of litigation and repeated adjournments.

The Hon'ble Apex Court held that the court should not grant any adjournment in a routine manner and should not delay in the dispensation of justice. There was a need to change the work culture. Adjournment culture should be outside the

periphery of the justice delivery system, in order to maintain rule of law.

It has also been held that the judicial officers should not worry, if their conscience was clear. Judicial officers were only to bear in mind the duties towards the litigants who were before the court.

In the case, the suit for eviction was filed on the ground of reasonable requirement of the landlord.

This court agrees with the contentions of the learned advocate for the plaintiff that in a suit for eviction on the ground of reasonable requirement, delay caused by the defendants may vitally affect the right of the landlord insofar as his necessity to use the premises was concerned.

However, this court is of the view that the learned court below should have recorded why further evidence by DW1, was not warranted. The learned court also did not record whether the evidence/documents which were sought to be tendered were at all relevant or not. The learned court below was required to undertake such exercise and arrive at a definite finding without mechanically rejecting the application on the ground of delay.

The decision of the Apex Court in **K.K. Velusamy vs. N. Palanisamy** reported in **(2011) 11 SCC 275**, is relied upon. The relevant paragraphs are quoted below:-

“14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

15. The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognised with reference to exercise of power under Section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

16. Neither the trial court nor the High Court considered the question whether it was a fit case for exercise of discretion under Section 151 or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.”

The order impugned is set aside, but cost is enhanced.

Only the DW1 shall adduce further evidence on the next date fixed by the learned court below in the suit. The evidence of DW1, including the cross-examination, shall be completed on the next date fixed. The plaintiff will be at liberty to adduce further evidence if they deem fit. Such evidence of the plaintiff including the chief and cross shall be completed on the following day. The arguments shall commence on and from September 4, 2023 and both the parties shall be allowed to argue their respective cases, in accordance with law. Parties shall conclude their arguments by September 15, 2023. Three days shall be given to each of the parties to complete their arguments on and from September 4, 2023.

The order dated July 14, 2023 is also set aside, as it appears that the arguments of the defendants

have been closed during the pendency of the revisional application.

With regard to the cost, this court is of the view that in view of the delay, for which the plaintiffs have suffered, cost of Rs.25,000/- shall be paid on or before August 28, 2023. Upon the court satisfying itself that the cost has been paid to the plaintiffs or to the learned advocate on record for the plaintiffs, the evidence of the DW1 shall be allowed. This time schedule shall be adhered to as far as possible.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)