

December 21, 2023
Sl. No.17
Court No.19
s.biswas

CO 2797 of 2023

Uttam Bhakta
vs.
Manasi Gantait

Mr. Abdur Rakib
Mr. Dhiman Banerjee

... for the petitioner

This revisional application arises out of an order dated June 15, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Tamluk in Title Suit No.47 of 2015.

By the order impugned, the learned court below allowed the application dated March 21, 2023 filed by the plaintiff and recalled the order dated December 6, 2022. The PW 3 was allowed to adduce evidence upon payment of cost. It appears that four dates had been fixed by the learned court below for evidence of PW 3. As the PW 3 was not available and adjournment was being prayed, plaintiff was asked to show cause, but plaintiff did not answer to the show cause. The evidence of PW 3 was closed by order dated December 6, 2022.

The plaintiff filed an application under Section 151 of the Code of Civil Procedure dated March 21, 2023. On June 15, 2023, the application was taken up for hearing. The learned court, upon perusal of the said application, was of the view that plaintiff was not aware of the order passed on September 22, 2022, by which the show cause was directed to be

filed. The fact that the matter was fixed on December 6, 2023 was also not informed to the plaintiff by the clerk of the learned advocate. Moreover, as the plaintiff was unwell, she was not in a position to produce her witness on the date fixed by the learned court.

For the ends of justice, the learned court below was of the view that the order by which the evidence of PW 3 was closed, should be recalled, upon payment of cost.

It is for the plaintiff to prove her case. The learned court, in exercise of inherent power, was satisfied that the plaintiff was prevented by sufficient cause from producing her witness, namely, PW 3, on the date fixed. Moreover, the ill health of the plaintiff and the misinformation given by the clerk of the learned advocate together, were sufficient reasons in the opinion of the court, to allow PW 3 an opportunity to adduce evidence. Moreover, carriage of proceedings was in the hands of the plaintiff and delay, if any, has been caused to the plaintiff's suit.

In my opinion, the inherent power can be invoked to do substantial justice. Thus, the decision of the Delhi High Court in the matter of **Daya Engg. Works (Sleeper) Ltd. vs. Union of India and another** reported in 2023 SCC OnLine Del 178, is not applicable to this case. The exercise of inherent

power is justified, especially because such inherent power has been exercised to do complete justice.

Accordingly, the revisional application is dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)