

03.01.2023
Item No.8
Ct. No.7
CHC
(disposed of)

C.O. 2765 of 2022
IA NO: CAN/1/2022

Smt. Kalpana Rudra Pal
.....
Vs.
Colonel Pranesh Rudra Pal (Retd)

Mr. Partha Chakraborty,
Ms. Paulomi Dutta
...for the petitioner

Mr. Kushal Chatterjee,
Mr. Debrup Choudhury
...for the opposite party

Closure of the evidence of P.W.1 upon rejecting the prayer for adjournment of defendant/petitioner is assailed in this case.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that there would be a serious consequence ensued, and that will lead deprivation of valuable rights of the petitioner to cross-examine the plaintiff's witness before a court of law.

It is thus submitted by Mr. Chakraborty that there may be some misconduct on the part of the petitioner/defendant to cross-examine the plaintiff's witness on the date already scheduled by the court below, but that should not be critically viewed in such a way resulting in gross injustice to petitioner/defendant.

Reliance is placed on a decision by Mr. Chakraborty reported in **2022 (3) Indian Civil Cases 420 (Cal.)** delivered in the case of ***Mirmala Debi Choubey & ors. vs. Pranab Kumar Banerjee & ors.*** to submit that an opportunity should be granted to the petitioner so that there may be effective cross-examination of the plaintiff's witness to unfold the controversy surfaced at the moment requiring a decision to be returned by the court below.

Mr. Kushal Chatterjee, learned advocate appearing for the opposite party disputes with the submission raised by Mr. Chakraborty submitting that when defendant was granted scope to cross-examine the witness examined by the plaintiff, the cross-examination should have been followed on that date, and there should not be any latitude given to the petitioner for cross-examination of witnesses any more.

Having considered the submission of both sides, it appears that closure of the cross-examination of plaintiff's witness is consequent upon the rejection of the defendant's prayer for adjournment on two dates, and that too, on the ground of illness of the learned advocate, representing the defendant in the court below.

Having considered the submission of both sides, it appears that cross-examination of defendant is a valuable right, and that is necessary to unfold the controversy presented before the court below in a particular litigation. There may be some misconduct on the part of the defendant's, which should not be treated to be fatal for the purpose.

The impugned order is thus set aside with a direction upon the opposite party/plaintiff to produce his witness on the date, to be suitably fixed by the court below within four (04) weeks from the date of communication of this order to the court below, if necessary, upon preponing the date, with notice to the other side.

Mr. Kushal Chatterjee, however, assures that the plaintiff's witness will be produced on the date to be scheduled by the court below in order to extend cooperation, so that the logical conclusion of the suit may be reached at an early date without granting any unnecessary adjournment.

The revisional application is thus disposed of.

The suit to be disposed of expeditiously without granting any unnecessary adjournment, unless it is extremely unavoidable.

The application being CAN/1/2022 also stands disposed of.

Parties are directed to make communication of this order to the court below.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)