

28.07.2023
Court No. 19
Item No.05
CP

C.O. No. 3804 of 2022

Indira Chakravarty & ors.

vs.

Bhaskar Bandyopadhyay & ors.

Mr. Rishad Medora
Ms. Urmila Chakraborty
Mr. Vivek Basu
Mr. Dipendranath Chunder
Mr. Sagnik Mukherjee

... for the petitioners.

Two affidavits of service as also postal receipts showing intimation to the opposite parties that the matter will be taken by this court today, have been filed. All the opposite parties as also their learned advocate conducting the matter in the learned West Bengal State Disputes Redressal Commission (hereinafter referred to as 'the Commission'), have been informed that the matter will be listed today. None appears despite service and intimation. The affidavits of service and the other postal receipts are taken on record.

Petitioners are the heirs and legal representatives of the original opposite party in Complaint Case No. CC/226/2019, one late Nrisingha Prasad Chakravarty. This revisional application has been filed by the said heirs of the

original opposite party, challenging the orders dated July 7, 2022 and November 7, 2022. By the order dated July 7, 2022, the opportunity granted to the petitioners to file their written version had been closed. November 7, 2022 was fixed for evidence on affidavit of the complainant. By the order dated November 7, 2022, the learned Commission directed that the opposite parties, against whom the complaint was proceeding ex parte, could not challenge the maintainability of the complaint case.

It is submitted by Mr. Medora, learned advocate for the petitioners that the predecessor-in-interest of the petitioners had already filed a written version within time, which had been accepted by the learned Commission. Substitution was effected on January 27, 2020. It is contended that the application for substitution and the order passed thereafter, were not properly communicated. When the complaint was received on April 9, 2022, by the petitioner nos. 2 and 3 (without annexures), a letter was written to the complainant which had come back unserved.

Records reveal that the petitioners entered appearance and filed an application challenging the maintainability of the proceedings. As the petitioners did not appear before the learned Commission after receiving the petition of complaint, the learned

Commission by the order dated July 7, 2022 closed the right of the petitioners to file their written version. Thereafter, the petitioners filed an application challenging the maintainability of the complaint case. By order dated November 7, 2022, the learned Commission rejected the application filed by the petitioners challenging the maintainability of the proceeding and fixed the matter for final hearing.

This court is of the view that the learned Commission proceeded with material irregularity for the reasons stated hereinbelow:

- a) The father of the substituted opposite parties had already filed a written version, which was on record.
- b) According to the petitioners, the said written version was submitted on July 15, 2019.
- c) The heirs were entitled under the law, to adopt the written version of their predecessor-in-interest.
- d) The learned Commission ought to have treated the written version of the predecessor-in-interest of the petitioners, as the written version of the petitioners and allowed the petitioners to contest the proceeding upon recalling the order dated July 7, 2022.

- e) The right of the petitioners to cross-examine the complainant and to adduce evidence should have been also upheld.

Under such circumstances, the orders impugned dated July 7, 2022 and November 7, 2022 are set aside, insofar as, the denial of the opportunity to the petitioners to contest the proceeding and to adduce evidence, are concerned.

The issue of maintainability need not be decided at the interim stage. The said issue shall be decided along with all the issues framed by the learned Commission, at the final hearing.

The written version filed by the predecessor-in-interest of the petitioners/the original opposite party shall be treated as the written version of the petitioners. The petitioners shall be entitled to cross-examine the complainants' witnesses. Such cross-examination shall be completed within the period to be fixed by the learned Commission.

Dates shall be fixed by the learned Commission. Neither any extension of time nor any adjournment shall be given to the petitioners. Thereafter, the petitioners shall adduce their evidence and the entire witness action shall be completed within the time limit to be fixed by the learned Commission, upon communication of this order.

The petitioners are at liberty to communicate this order to the opposite parties and also file server copy of this order before the learned Commission for immediate steps.

The learned Commission shall proceed to dispose of the complaint case as directed hereinabove.

The above order is not an opinion of the court on the merits of the issues involved in the complaint case. The learned Commission shall proceed in accordance with law and independently.

The revisional application is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)