

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

Hon'ble Justice Shampa Sarkar

C.O. 375 of 2024

Ratna Chatterjee

Vs.

Sovan Chatterjee

For the petitioner : Mr. Aniruddha Chatterjee
Ms. Koel Mukherjee,
Mr. Anurag Sardar,
Mr. Mahfuz Murshed,
Mr. Sayan Mukherjee.

For the opposite party : Mr. Saptansu Basu, Sr. Advocate
Mr. Jaydip Kar, Sr. Advocate,
Mr. Arijit Bardhan,
Mr. Sayan Sinha,
Mr. Nilankan Banerjee.

Hearing concluded on: 4.03.2024

Judgment on: 12.04.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated January 22, 2004 passed by the learned Additional District Judge, 6th Court at Alipore, District 24-Parganas South. By the order impugned, the learned Court allowed an application under Section 114 read with Section 151 of the Code of Civil Procedure, thereby, permitting the opposite party to cross-examine the DW1, i.e., the petitioner herein, for two days. The dates for cross-examination of DW1 as a last, final

and special chance, were fixed as February 2, 2024 and February 3, 2024.

2. The opposite party filed a matrimonial suit for a decree of divorce on the grounds stated therein. The petitioner entered appearance and is contesting the suit by filing a written statement. The petitioner also filed a counter-claim for restitution of conjugal rights. The opposite party filed his reply to the counter-claim. Reconciliation failed and evidence commenced.

3. After completion of the evidence of the opposite party, the deposition of the petitioner commenced from April 4, 2023. There were certain disputes with regard to the recording of deposition and the learned trial Judge had directed videography of the cross-examination of the DW1/petitioner, by a professional videographer. Such order was challenged before the High Court in CO No.1644 of 2023. The revisional application was disposed of by this Court, by an order dated June 13, 2023 with the following observations:-

“...The cross-examination of the DW1 shall be concluded within a month from the next date to be fixed by the learned court below. The evidence of the other DWs shall also be recorded in the manner stated hereinabove.

It is expected that the evidence of all DWs shall be concluded within the next four months and the suit shall be disposed of within the following six months...”

4. The cross-examination of DW1 was held between June 19, 2023, to July 18, 2023. The trial Court directed that the cross-examination would continue from July 24, 2023 to July 26, 2023. On July 24, 2023, the petitioner prayed for an adjournment. July 25, 2023 and

July 26, 2023 were fixed for further cross-examination. Thereafter, three more days, namely, August 7, 2023, August 8, 2023 and August 9, 2023, were fixed for cross-examination of DW1. On August 7, 2023, the petitioner prayed for an adjournment. On August 9, 2023, the cross-examination of DW1 was deferred and on consent of the parties, three further dates, namely, August 28, 2023, August 29, 2023 and August 30, 2023 were allotted as last chance. The learned Court observed that no further dates would be accommodated in view of the direction of the High Court for completion of the cross-examination of DW1 and the other DWs, within a particular period.

5. In the order dated August 30, 2023, the learned Court had made certain observations with regard to the presence of the personal security guards and third parties in the corridor of the Court room, which had created some commotion and an unwanted situation. The opposite party was cautioned by the Court to stop his people from loitering in the corridor of the outside the Court room. The court's inspector was directed to provide security to the parties.

6. On August 30, 2023, an adjournment was taken on behalf of the petitioner. The learned Court fixed September 2, 2023 and September 4, 2023.

7. On September 2, 2023, the opposite party appeared before the Court and filed an application, inter alia, stating that the order dated August 30, 2023 would be challenged before the High Court by filing a revisional application. The learned Court adjourned the matter and fixed September 4, 2023 for cross examination of the DW1. On

September 4, 2023, cross examination was adjourned and September 13, 2023 was fixed as the next date for hearing of some applications. One such application was seeking recusal of the learned court from the adjudicatory process, filed by the opposite party. The applications were disposed of by order dated September 13, 2023. The Court did not find any reason to recuse from the suit. The court fixed September 25, 2023 and September 26, 2023 for cross examination of DW1. An adjournment was prayed for on September 25, 2023 by the opposite party on the ground that an application for transfer of the matrimonial suit had been filed before the learned District Judge.

8. The learned District Judge, South 24-Parganas, upon considering the case records in details came to the finding that the learned trial Judge tried his best to conclude the proceeding as directed by the High Court and transfer of the case would only amount to interference with the order of the High Court. The High Court had directed the learned trial Judge to conclude the cross-examination of the DW1 within a month from the next date fixed, the evidence of other DW within four months, with a further direction that the suit should be disposed of within six months. The said order was passed on October 17, 2023. The application for transfer of the suit was rejected. The suit went back to the learned Trial Judge and two more dates, i.e., December 5, 2023 and December 6, 2023 were fixed by the learned Court for further cross examination of DW1. On December 6, 2023, the cross-examination of DW1 continued and the learned Court fixed December 18, 2023 and December 19, 2023 for

further cross-examination of DW1. On December 19, 2023, the DW1 was cross-examined. A news item on Kolkata T.V., stored in a pen drive, was displayed in open Court by the opposite party and shown to the witness, i.e., the petitioner. The witness refused to watch the same. The learned Advocate for the opposite party prayed that the pen drive be marked as an exhibit. As the identity of the maker of the video was not disclosed and there was no certificate in respect of such electronically prepared document, the learned court refused to mark the pen drive as an exhibit. Learned Advocate for the opposite party submitted before the court that he was unwilling to cross-examine the DW1 any further, as the opposite party wanted to move the High Court against the order refusing to mark the pen drive as an exhibit.

9. The learned trial Judge, with certain observations, closed the evidence of DW1 and fixed January 17, 2024 for the evidence of the DW2. The learned Court held that on 18 days the cross-examination of DW1 had continued. On consent of both the parties, further cross-examination of DWs had been extended beyond the period fixed by the High Court. The opposite party had undertaken before the High Court that he would complete the cross-examination of DW1 within four to five days. Under such circumstances, the learned trial court expressed his inability to adjourn the cross-examination of DW1 even if the opposite party had the intention to file a revisional application against the order dated December 19, 2023. Thereafter, an application under Section 114 read with Section 151 of the Code of

Civil Procedure was filed by the opposite party for review of the order dated December and for allowing cross-examination of DW1. By the said application, the opposite party sought review of the order dated December 19, 2023. The grounds taken were as follows:-

a) The witness was asked to produce certain documents during her cross-examination on December 18, 2023 which she undertook to file on December 19, 2023.

b) The witness did not file those documents on December 19, 2023 and the witness did not answer the questions during her cross-examination on December 19, 2023.

c) On December 19, 2023, while the cross-examination was in progress, the witness started dishonouring the questions.

d) The Court adjourned the cross-examination as the DW1 refused to reply, but it was later learnt that the cross-examination of DW1 had been closed.

e) The order did not record that the evidence of the DW1 was closed because she had refused to answer the question.

f) Although, the order recorded that the DW1 had been cross-examined on eighteen occasions, the fact remained that the DW1 was unwilling to cooperate during the cross-examination and precluded the cross-examination from continuing properly. The DW1, by her evasive answers and conduct, did not allow the cross-examination to be completed to the satisfaction of the opposite party.

10. An objection to the said application was filed by the petitioner. The petitioner relied on the order of this Court by which

the earlier order of closure of cross-examination of DW1 was recalled. Audio recording of the testimony of all the DWs were permitted, by fixing the time limit for completion of the cross-examination of DW1 as a month from the date to be fixed by the learned Court. The petitioner contended that the cross-examination of DW.1 continued much beyond such period and the opposite party intentionally refused to complete the cross-examination of DW1. Prayer was made by the petitioner for rejection of the said application. The learned Court allowed the application by fixing two further days for cross-examination of the DW1, i.e., on February 2, 2024 and February 3, 2024. Aggrieved, the petitioner has approached this court.

11. Mr. Aniruddha Chatterjee, learned Advocate for the petitioner submitted that the application under Section 114 of the Code of Civil Procedure was not maintainable. No ground for review of the order dated December 19, 2023, was made out. The application was also not in proper form. Unless the opposite party could show that the order dated December 19, 2023 was passed in ignorance of law or suffered from error apparent on the face of record or there had been subsequent discovery of important material which could not be placed before the learned Court when the order was passed, review of the order was not permissible.

12. Moreover, the application contained incorrect and untrue facts. The cross-examination of DW1 was not closed on December 19, 2023 because the petitioner refused to answer questions. The order would reflect that when a prayer on behalf of the opposite party for

marking the pen drive as an exhibit was refused by the learned Court, a prayer was made on behalf of the opposite party that the opposite party intended to approach the High Court. The Court recorded that on eighteen occasions cross-examination of DW1 had been held. The court closed the cross-examination in order to show respect to the order of the High Court dated June 13, 2023. The application was filed only to harass the wife/petitioner and the protraction of the cross-examination of DW1 was causing her immense agony and embarrassment in the public eye. The petitioner's political career was also being compromised.

13. Mr. Chatterjee contended that the cross-examination of the petitioner was intentionally prolonged. By filing one application after another, the opposite party tried to stall the proceeding, despite the order of the High Court. The opposite party flagrantly violated the time limit fixed by the High Court. He made personal allegations against the Judge. He filed an application for transfer the suit. He wanted the judge to recuse. Such conduct of the opposite party was deplorable and contemptuous. The application was filed for ulterior gain and to further defame and harass the wife.

14. Mr. Saptansu Basu, learned Senior Advocate on behalf of the opposite party submitted that the opposite party intended to approach the High Court on two occasions, but he did not ultimately do so on better legal advice. He had also changed his learned Advocate. The order dated December 19, 2023 would indicate that the cross-examination had not been completed. The opposite party

had intended to approach the High Court against the order of refusal to mark the pen drive as an exhibit and had prayed for an adjournment. Ultimately, the opposite party abandoned the idea on legal advice and thus the application was filed for reconsideration of the order dated December 19, 2023. Although, the application has been titled as one under Section 114 of the Code of Civil Procedure, in effect, the same was an application under Section 151 of the Code of Civil Procedure praying for invocation of the inherent power of the Court to resume cross-examination of DW1, for proper completion of the cross-examination. It would be evident from the order that the cross-examination was abruptly closed. The same was not complete. The DW1 was not discharged in accordance with law. Mr. Basu urged this Court to ignore the ground stated in Section 114 of the Code of Civil Procedure and specifically submitted that those were not being urged by the opposite party. He only prayed that an opportunity, as a last chance, be given to the opposite party to complete the cross-examination on two consecutive dates, for some time on each date.

15. Upon hearing the learned Advocates for the respective parties, there is no doubt in the mind of this Court that the opposite party did not conduct himself in a way which would demonstrate that he had the bonafide intention to comply with the time limit fixed by the High Court in CO No.1644 of 2023. CO No.1644 of 2023 was filed by the petitioner challenging an order by which the learned Court had directed engagement of a professional videographer to record the

petitioner's cross-examination. This Court held that professional videography could not be permitted and directed as follows:-

"Under such circumstances, the order impugned is modified to the extent that upon noting the petitioner's objection with regard to the deposition, the cross-examination shall be kept on record. The correctness of such statement shall be decided at the trial. Further cross-examination of the DW1 shall be allowed. The order dated June 2, 2023, closing the cross-examination of DW1 is recalled. The learned court shall be at liberty to preserve the sanctity of the court. In order to avoid further objections that may be raised with regard to the oral testimony of the DWs, audio recording of the testimony of all the DWs shall be permitted. No videography shall be permitted. The device shall be operated, monitored and preserved by the learned court. If any controversy arises in future, with regard to the correctness of the statements recorded, the audio recordings shall be referred to by the learned court.

The cross-examination of the DW1 shall be concluded within a month from the next date to be fixed by the learned court below. The evidence of the other DWs shall also be recorded in the manner stated hereinabove.

It is expected that the evidence of all DWs shall be concluded within the next four months and the suit shall be disposed of within the following six months."

16. This Court also recalled an order of closure of cross-examination of DW1 and directed that audio recording of the testimony of the DWs would be permitted. It was further directed that the cross-examination of DW1 should be concluded within a month from the next date to be fixed by the learned Court. The evidence of all DWs should be completed within four months and the suit should be disposed of within six months.

17. Thereafter, the evidence of DW1 continued and the learned trial court records that as many as on eighteen occasions, the said cross-examination had been held. On December 19, 2023, when the

petitioner refused to acknowledge the recording of the news item stored in a pen drive, the learned Advocate for the opposite party urged the trial court to mark the pen drive as an exhibit. The learned Court refused to do so. The opposite party stopped the cross-examination and prayed for an adjournment on the ground that he wanted to move the High Court against such order. Accordingly, the cross-examination of DW1 was closed and the Court, inter alia, held that as the cross-examination continued for more than eighteen days and a long time had lapsed since the period within which the High Court had directed completion of the cross-examination of DW1, the cross-examination should be closed and the cross-examination of other DWs should commence, without further delay or wastage of time.

18. The opposite party did not approach the High Court, instead he filed an application under Section 114 read with Section 151 of the Code of Civil Procedure. The said application definitely is not an application for review. However, the nomenclature of the said application rightly did not deter the learned trial Judge from exercising his inherent power by allowing completion of the cross-examination of DW1. The learned Court observed that due to the mandate of the High Court, evidence of DW1 was closed as the same had travelled beyond the period fixed by the High Court. It appears from the order of the learned trial Judge that the learned trial Judge was conscious of the fact that apart from the expiry of the time limit

fixed by the High Court, there was no real reason for closure of the cross-examination on December 19, 2023.

19. According to the trial Court, an opportunity of two days should be given to the opposite party for conclusion of the cross-examination of DW1, as a special case. The court held that no further opportunity, beyond the said two days, would be allowed.

20. The relevant portion of the order is quoted below :-

“...So far as opportunity for further cross of DW-1 is concerned, it appears that due to mandates of Hon'ble Court the evidence of DW-1 was closed being travelled beyond the statutory period as per dictum of the Hon'ble Court. With due honour of the direction of the Hon'ble Court for conclusion of further cross-examination of DW-1 in specific time bound manner as framed by the Hon'ble Court, on account of engagement of newly appointed Ld. Advocate for the petitioner side Mr. Mihir Dutta for conducting further cross-examination of DW-1, a special opportunity of two days may be given to the petitioner for conclusion of further cross-examination of DW-1 on condition that no any further opportunity shall be given to the petitioner for conclusion of further cross-examination of DW-1 beyond such two days under any circumstances. Thus, the petition filed by the petitioner u/s 114 and/or u/s 151 of the CPC is hereby allowed on contest in part only for further cross-examination of DW-1 for two days.”

21. In my opinion, the inherent power of the court has been invoked and a discretion has been exercised by the learned trial Judge. The learned trial Judge was in seisin of the matter all through and he was aware of the proceeding and the way the same was progressing. The conduct of the parties was also before the Court. The trend of the cross-examination and what transpired on December 19, 2023 was within the knowledge of the court. The learned Judge came to the conclusion that the cross-examination had not been completed and it was closed only because the time frame fixed by the High Court had expired. In my view, although time fixed by this

Court could not be adhered to by the parties, the parties could not be deprived from conducting the case to their satisfaction. The learned Judge was not debarred from extending an opportunity to the opposite party in the fitness of things and if the situation so demanded. The time limit fixed by the High Court can at best be a guideline or a desire for conclusion of a proceeding and to prevent a party from procrastinating or dragging a proceeding for wrong reasons. However, the trial judge is the supreme in his Court and he is in a position to control the proceedings. In this case, the learned Court had done so and exercised his inherent power by allowing the cross-examination which had been closed only because eighteen dates had been consumed for cross-examination of DW1 and the dictum of the High Court should be honoured. From the tenor of the order, it appears that the court was conscious that the cross-examination had not been completed.

22. Thus, the learned Court allowed two further days for cross-examination as a special case and a last chance. This Court does not wish to interfere with the order as it is neither contrary to law nor perverse. It is not that the Court had relied on other extraneous consideration while passing such order.

23. In the matrimonial suit, the DW1 is the prime witness. Cross-examination is a valuable right. The opposite party should be allowed to complete the cross-examination for the ends of justice. However, this Court records the dissatisfaction with regard to approach of the opposite party and continuous attempts to stall the

proceedings before the learned trial Judge. On two occasions, the proceedings were adjourned because the opposite party wanted to approach the High Court. Then he decided against it. He wanted the learned Court to recuse. Again, he filed an application under Section 24 of the Code of Civil Procedure for transfer of the suit to another court.

24. Such acts and omissions, in my opinion, caused delay in completion of the cross-examination of DW1 and for such delay and harassment, the DW1 should be compensated with costs. Cost of Rs.50,000/- shall be paid to the DW1.

25. The manner and the time within which such cost shall be paid, will be determined by the learned Court. The parties are at liberty to approach the Court by filing a put up petition, for fixing the next dates and the modality for payment of cost. Cross examination on two simultaneous dates, for not more than two hours on each date, shall be permitted provided that the cost is paid. In case of failure to pay cost or to comply with this order or the order to be passed by the learned trial judge pursuant to this order, the cross-examination shall be closed and no further opportunity shall be granted. The order impugned is modified to the above extent.

26. The revisional application is accordingly disposed of.

27. Parties are to act on the server copy of this judgment. Parties are to act on the basis of the sever copy of this order.

(Shampa Sarkar, J.)