

16.05.2024
Ct. No. 19
Sl. No.04
Cp

C.O. No. 843 of 2024

Smt. Nirmala Debi Choubey & ors.
Vs.
Sri Pranab Kumar Banerjee & ors.

Mr. Sukanta Chakrabarty
Mr. Anindya Halder

... for the petitioners.

Mr. Saptansu Basu, Sr. Advocate
Ms. Mrinalini Majumdar

.....for the opposite party nos. 1 to 3.

1. The revisional application arises out of orders dated March 7, 2020 and November 18, 2023, passed by the learned Civil Judge (Junior Division), Additional Court at Asansol in Title Suit No.147 of 2001. The learned court rejected an application filed by the petitioners praying for recall of DW-1 for cross examination.
2. Mr. Chakrabarty, learned advocate for the petitioners, relies on an order dated May 11, 2022, passed by a Coordinate Bench of this court in C.O. 697 of 2022. By the said order, the closure of evidence of PW-1 was set aside upon the High Court recording that although the conduct of the plaintiffs had not been satisfactory, an opportunity should be given to the plaintiffs to recall the PW-1 to adduce evidence. Mr. Chakrabarty further submits that His Lordship (as His Lordship then was), had recorded that the defendants should be allowed an opportunity to adduce their witnesses to controvert the

plaint case. The High Court, admittedly, had set aside the order dated February 15, 2020 in its totality. By order dated February 15, 2020, the next date for DW was fixed on March 7, 2020. On March 7, 2020, the cross examination of the DW-1 did not take place. The plaintiffs filed an application for adjournment on that day, but did not move the same. Thus, the learned court recorded that the cross examination of the DW-1 should be deemed to be declined.

3. Mr. Chakrabarty has made a point that when the entirety of the order dated February 15, 2020 had been set aside, fixing March 7, 2020, as the date for DW, was also set aside. Thus, even if the plaintiffs were not available to cross examine the DW-1 on that date, the court could not have recorded that the inability of the plaintiffs, to cross-examine the DW1, should be treated as “deemed decline”.
4. Admittedly, in this case, the PW-1 was allowed to be recalled and the evidence of the PW-1 on recall concluded in 2022. Thus, the matter was actually reopened and the clock was set back to the stage of evidence of PW-1.
5. Under such circumstances, an earlier order by which the cross examination of DW-1 was deemed to be treated as declined, becomes unjust and also a procedural irregularity.

6. Moreover, His Lordship had directed that once evidence of PW-1 was completed upon recall, the defendants' witnesses should also be allowed to adduce further evidence.
7. Under such circumstances, the order dated March 7, 2020 and the order impugned are set aside.
8. This court finds that the conduct of the plaintiffs have not reflected due diligence. However, for the ends of justice, one last opportunity is granted to the plaintiffs to recall DW-1 for cross-examination. The cross-examination of the DW-1 on recall, shall be permitted by the learned court on two consecutive days for two hours each, upon being satisfied that a sum of Rs.25,000/- has been paid to the defendants by the plaintiffs, within two weeks from date. In default, the arguments shall proceed.
9. As the suit is of 1999, the learned court is requested to make a sincere endeavour to dispose of the suit within six months.

The revisional application is accordingly disposed of.

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

(Shampa Sarkar, J.)