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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 910 of 2024

Messrs M.R. Singhwi and Company & Anr.
Vs.
Charu Diesels LLP & Ors.

Mr. Tanmay Mukherjee
Mr. Sayantan Bose
Mr. Shounak Mukhopadhyay
Ms. Priyanka Gope
... For the petitioners.

Mr. Kuldeep Mallick
Mr. Krishnendu Paul Chowdhury
... For the opposite party no.1.

1. Challenging the order dated 8th February, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore, in T.S. no. 674 of 2022 whereby, the learned Judge while considering an application filed under Section 138 of the Indian Evidence Act, by the plaintiff/ opposite party had been pleased to direct the plaintiff's witness PW-1 to step on the dock and give reply to a suggestion given by defendants'/ petitioners' advocate.
2. As would appear from the records, the present revisional application has been filed in connection with a suit for recovery of "Khas" possession by evicting the defendants therefrom. It is the plaintiff/opposite party's case that the defendant no.1 is illegally occupying the suit property and is a trespasser in respect thereof. The defendants have been contesting

the said suit by filing written statement. It is the specific case of the defendants/petitioners in the written statement that the defendants are the sub-lessees in respect of the suit property and are in lawful occupation thereof. It would appear from the records that after the examination of PW-1, he was cross-examined by the defendants' advocate on 12th December, 2023. That in response to a negative suggestion put forward to PW-1 by the learned advocate for the defendants, the plaintiff witness had given the following answer "*Not a fact defendant is trespasser and is liable to pay damages*". From the records it would transpire that on the very next date the learned advocate representing the plaintiff while referring the relevant portion of the deposition of PW-1, had prayed for correcting the same, as according to the plaintiff the answer had been recorded incorrectly by the Court steno. The learned Court after hearing the parties was of the view that if the plaintiff intended to have the deposition corrected, a proper application must be filed. It appears that the plaintiff had since filed an application under the provisions of Section 138 of the Indian Evidence Act read with Section 151 of the Code of Civil Procedure 1908. Such application was duly contested by the defendants by filing written objection. The same ultimately culminated in the order impugned.

3. Mr. Mukherjee, learned advocate appearing on behalf of the defendants/petitioners by drawing attention of this Court to the prayers made in the application would submit that plaintiff had sought for insertion of a (comma) after the words “Not a fact” and having regard thereto, the learned Judge has exceeded his jurisdiction in directing PW-1 to step on the dock to respond to the said suggestion once again, which suggestion according to him, had already been answered correctly.
4. When the aforesaid matter came up for consideration on 6th November, 2024, this Court after hearing the parties had directed the petitioners to take appropriate instruction as to how the evidence of PW-1 been taken, whether the same was taken down in the language of the Court or by any other mode.
5. Today, Mr. Mukherjee, would candidly submit that though the question was put to the witness in English language, the witness had responded to the same in Hindi language and the learned Judge had interpreted the same and it was taken down in the dictation of the Court (learned Judge) by the court steno.
6. In the instant case, the revisional application has been taken up for consideration upon service thereof on the plaintiff/opposite party.

7. Mr. Mallick, learned advocate appears on behalf plaintiff/opposite party no.1.
8. Having heard the learned advocates appearing for the respective parties I find that the cross examination of the PW-1 was held on 12th December 2023. On the very next date the plaintiff's advocate had complained that the answer of the PW-1 as regards the negative suggestion given by the learned advocate for the defendant nos. 1 to 3 had not gone down correctly. It would transpire that from the order dated 8th February, 2024, the learned Judge after hearing the parties and taking note of the plaint case, the defendants' defense put forward in the written statement and the evidence adduced, had categorically come to a finding that there was a typographical error in noting down the answer of PW-1 to the negative suggestion given by the learned advocate for the defendant nos. 1 to 3. It appears that the learned Judge instead of correcting the same had directed PW-1 to step on the dock to respond to the said suggestion once again. Although, Mr. Mukherjee has vehemently argued that by issuing such direction, the learned Judge had exceeded his jurisdiction, however, taking note of the provisions contained in Order XVIII Rule 17 of the Code of Civil Procedure, I find that the learned Judge was well within his authority and jurisdiction to direct PW-1 to respond to

the said suggestion especially, when it was the learned Judge who had interpreted the answer and had dictated the same. The response of the witness was taken down in the language of the Court (learned Judge) and as such the learned judge is the best person in such circumstance, to ascertain whether the dictation had been correctly transcribed. Since, he has arrived at a finding that there was a typographical error and in furtherance thereof had directed PW-1 to step on the dock, to respond to the suggestion once again, I do not find irregularity far less any jurisdictional error committed by the learned Judge.

9. In view thereof, the revisional application fails and is accordingly dismissed, without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)