

22.05.2024
SI No.14
Court No.8
(gc)

**FAT 121 of 2024
CAN 1 of 2024**

**Smt. Bhupali Mondal
Vs.
Satyendra Kumar Pramanick**

Mr. Soumya Ray,
Mr. Aditya Sen,
Ms. Anwesha Saha,
Ms. Priya Ghosal,
Ms. Tamanna Khatun
...for the Appellant.
Mr. Sounak Bhattacharya,
Mr. Asit Choudhury,
Mr. Anirban Saha Ray
...for the Respondent.

1. This appeal is arising out an eviction decree passed in an ejectment suit being no.23 of 2019. The principal ground of challenge is that the appellant was not given an opportunity to cross-examine the witness of the plaintiff.
2. The learned Counsel for the appellant has referred to the various dates that were fixed for further cross-examination of P.W.1 to demonstrate that in most of the dates, the Presiding Officer was not available. In the meantime, the appellant has also filed an application under Order VII Rule 11 that was dismissed on 17th November, 2023. Thereafter, the matter was taken up for cross-examination of

P.W.1 on 10th January, 2024. However, in view of the pendency of a civil revision preferred against the order rejecting the prayer under Order VII Rule 11 of the Code of Civil Procedure, the appellant did not participate in the said proceeding. The learned Trial Judge fixed 28th February, 2024 for cross-examination of P.W.1 as a last chance and the subsequent orders, namely, 28th February, 2024, 6th March, 2024 and 19th March, 2024, the appellant did not appear. We could not find any plausible explanation from the appellant for not being represented on the said dates and cross-examined the witness of the plaintiff. The defendant also did not file written notes of argument.

3. However, considering the fact that the P.W.1 was partly cross-examined and in some of the dates the Trial Court did not function, we want to give a last opportunity to the appellant to cross-examine the P.W.1 and any other witness the plaintiff proposed to produce. In the event the defendant desires to lead evidence, the Court should make a time-frame within which such evidence shall be completed.

4. We make it clear that the Trial Court shall not grant any adjournment to either of the parties unless there are unavoidable circumstances.
5. The time-frame for conclusion of the trial as shall be prepared by the learned Judge, 12th Bench, City Civil Court at Calcutta shall be strictly adhered to by the parties.
6. The parties are directed to place this order before the learned Bench in order to enable the learned Trial Court to prepare a time-frame for concluding the trial.
7. The appeal is allowed.
8. The impugned judgment is set aside on the ground stated above.
9. We make it clear that we have not gone into the merits of the matter.
10. Accordingly, the appeal and the application stand disposed of.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)