

S/L 4-5
19.6.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1941 of 2024

Pradip Kumar Das
Vs.

Smt. Jyotsna Shyamal @ Jyotsna Sen & Ors.

With
CO 1942 of 2024

Sri Surojit Biswas
Vs.

Smt. Jyotsna Shyamal @ Jyotsna Sen & Ors.

Mr. Abhijit Ray
Mr. Santu Nandy
Ms. Aishwarya P. Ganguly
Md. Ayaar
Ms. Debarna Roy

...for the Petitioner
[in CO 1941 of 2024].

Mr. Amitabha Ghosh
Mr. Sirsendu Bikash Paul
Ms. Arpita Dhar

...for the Petitioner
[in CO 1942 of 2024].

Mr. Tanmoy Mukherjee
Mr. Sourik Das
Mr. Anirban Saha Ray

...for the Opposite Party No.1.

Mr. Shaunak Ghosh
Mr. Diptamoy Talukdar

...for the Opposite Party No.2.

These two revisional applications since are arising out of the selfsame suit, they are taken up for analogous hearing and disposal.

Affidavits-of-service filed on behalf of the petitioners be kept with the record.

The connected suit being Title Suit No.1389 of 2018 is pending before the learned Judge, XIIth Bench, City Civil Court at Calcutta.

The learned Trial Judge by the order No. 74 dated May 14, 2024 has refused to allow the defendant no. 1 to cross-examine the D.W.3.

The defendant no. 1 has challenged the said order in C.O. 1941 of 2024.

Mr. Abhijit Ray, learned advocate for the defendant no. 1 submits that the defendant no. 3 (D.W. 3) is supporting the case of the plaintiff as such he is required to be cross-examined on behalf of his client but the same was denied even when the copy of the evidence-in-chief of the said witness was not served upon the defendant no. 1.

The defendant no. 2 has challenged the order no. 73 dated April 16, 2024 in C.O. No. 1942 of 2024 as by the said order, his prayer to cross-examine the D.W.3. has also been refused.

Mr. Amitabha Ghosh, learned advocate for the defendant no.2 submits that the evidence of his client was not concluded, at this stage, the evidence of the D.W.3 was recorded and concluded denying his client an opportunity to cross-examine the said witness.

Mr. Tanmoy Mukherjee, learned advocate for the plaintiff/opposite party submits that the defendant nos. 1 and 2 have delayed the disposal of the suit in every possible manner, the learned Trial Judge, considering their such conduct, has rightly refused to allow the said defendants to cross-examine the D.W.3.

Heard the learned advocate for the parties, perused the materials-on-record.

The learned Trial Judge in the orders impugned has recorded in detail the dilatory tactics adopted by the defendant nos. 1 and 2 to defer the disposal of the suit and considering their such conduct has refused to allow them to cross-examine the D.W.3.

The conduct of the defendants is certainly highly blemished but same cannot justify closure of the evidence of the D.W.3 denying opportunity to the said defendants to cross-examine the said witness as there is allegation of non-supply of the copy of the evidence-in-chief of the said witness, however, the closure of the evidence of D.W.2 is well-justified.

Having regard to the circumstances as discussed above, the learned Trial Judge, on production of this order, is requested to fix a date for cross-examination of

the D.W.3 by the defendant nos. 1 and 2 but such cross-examination must be concluded on the date so fixed, in default, the evidence of the D.W.3 shall stand closed.

The learned Trial Judge shall not allow the defendants to advance oral arguments, the said defendants, however are at liberty to file written notes on argument but same must be filed within two days after conclusion of the evidence of the D.W.3.

The orders impugned are modified to the extent as indicated above.

CO 1941 of 2024 and CO 1942 of 2024 are disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

(Biswajit Basu, J.)