

M/L 90 & 91
08.01.2024
Bpg.

C.O. 2690 of 2019
With
C.O. 2691 of 2019

Smt. Tapati Tripathy
Versus
Smt. Santa Nag

Mr. Jayanta Das
Ms. Soumita Ghosh.
...for the petitioner.

Petitioner undertakes to file affidavit-of-service in course of the day.

The opposite party is not represented.

These two revisional applications under Article 227 of the Constitution of India have been preferred against Order no.34 dated 19.11.2018 and Order No.40 dated 28.06.2019 passed by the learned Civil Judge (Senior Division), Haldia, Purba Medinipur in connection with Money Suit No.71 of 2013 (renumbered as Money Suit No.53 of 2015).

The subject matter of the application as submitted by the petitioner is that the opposite party herein as plaintiff instituted the aforesaid suit seeking money decree for a sum of Rs.20,28,000/- along with 18% per annum interest from 01.04.2011 as

described in the schedule to the plaint. He further submits that while the said suit was instituted a list of documents was also filed by the plaintiff comprising of only three number of documents under serial nos.1 and 2. The petitioner being the defendant entered in the said suit and filed written statement. On 29th March, 2017, PW-1 on behalf of the plaintiff filed affidavit-in-chief and the trial of the suit commenced. Ultimately, the evidence of the P.W.1 was closed by an order dated 12.04.2018.

Petitioner submits that subsequent to the closure of evidence of P.W.1 on 12.04.2018, the plaintiff/opposite party filed an application before the court on 07.06.2018, thereby seeking recall of the order dated 12.04.2018, contending that due to inadvertence, the plaintiff could not submit certain documents (challans) before the court while he adduced evidence and, therefore, he sought for permission to tender all those documents by way of further affidavit-in-evidence with a further prayer to recall the order about closure of evidence dated 12.04.2018.

The petitioner herein as defendant filed written objection against the said application and learned court below after hearing both the parties by an order dated 19.11.2018 allowed the said prayer of

the plaintiff and recalled the order dated 12.04.2018, thereby permitting the plaintiff to produce and examine another witness as PW-2 on conclusion of evidence of PW-1 as prayed in that application.

Being aggrieved by the said order, Mr. Das, learned advocate appearing on behalf of the petitioner submits that the court below acted illegally and with material irregularity in recalling the order dated 12.04.2018 and also by marking the said documents (challans) as exhibits and thereby caused miscarriage of justice. Learned court below was not justified in reopening the evidence after discharge of the witness of the plaintiff and, in fact, by the order impugned he allowed the plaintiff to fill up his lacuna. Learned court below ought to have appreciated that the prayer for recalling the order dated 12.04.2018 was not bona fide and said documents were filed long after commencement of trial in violation of Order XIII, rule-1 and had been made without the plea of due diligence and, as such, ought to have been dismissed and court below ought not to have marked said documents (challans) as exhibits. Accordingly, he has prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner.

On perusal of the order impugned, it appears that the court below allowed the said application with the observation that tacit law is party concerned should be rendered with opportunity to present and prove his or her case. In order to unfurl truth all evidence are required to be brought within the arena of judicial notice. Thereafter, it appears that by a subsequent order dated 22.01.2019 the challans were marked as exhibit 6 (collectively) by the court below.

Prima facie, in view of the facts and circumstances of the case, I do not find any infirmity or illegality in the order impugned. However, since there was a lacuna in filing the challan by the plaintiff in compliance with Order XIII rule 1, following the ratio laid down in **Bipin Santilal Panchal's case, (2001) 3 SCC 01**, the present applications being CO 2690 of 2019 and CO 2691 of 2019 are disposed of with a direction upon the court below to mark the said documents [which has already been marked as exhibits 6 (collectively)] "with objection" tentatively keeping open the objection raised by petitioner under Order XIII rule 1 and veracity of all those documents for decision at the last stage in the final judgment.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)