February 20, 2024
Sl. No.3
Court No.19
s.biswas

CO 4300 of 2023

Pannalal Sarkar and others
vs.
M/s. I. K. Agencies Pvt. Ltd. and others

Mr. Kaustav Chandra Das
... for the petitioners
Mr. Saptansu Basu, Sr. Adv.
Mr. Rajarshi Dutta
Mr. Asim Chatterjee
Mr. Ambu Bindu Chakraborty
... for the opposite parties

1. This revisional application arises out of an order dated October 10, 2023, by which an application under Section 151 of the Code of Civil Procedure read with Section 138 of the Indian Evidence Act, was allowed by the learned court.

2. The learned court allowed recalling of PW1, upon payment of cost of Rs.1000/-. The said application was allowed so that certain doubts with regard to the questions put to the witness, could be clarified. The court held that although the documents sought to be produced on recall did not appear to be entirely relevant in determining the dispute in the suit, the manner of cross-examination of the PW1 had made the capacity of the witness to depose in the suit, uncertain.

3. Challenging the said decision, the petitioners argue that at the stage of re-examination of the witness only a clarification or explanation can be given to the deposition already made. Further documents could not be allowed to be filed.

4. Mr. Das, learned advocate appearing for the petitioners, submits that the court was wrong in allowing such documents to be filed after the cross-examination of PW1. Those documents were within his knowlege.

5. It is next contended that the order impugned did not take into consideration the provision of Order 18 Rule 17 of the Code of Civil Procedure.

6. Mr. Basu, learned Senior Advocate appearing for the opposite parties submits that some questions were put to PW1 with regard to the documents of the company. Thus, those documents were sought to be filed upon recalling of PW1. The documents have become relevant in view of the questions put to the witness. Mr. Basu further submits that the court itself was confused as to the nature of cross-examination and allowed the documents to be tendered.

7. Mr. Basu relies on the decision of the Hon'ble Apex Court in the matter of **Ramsewak and others vs. State of M.P.** reported in (2004) 11 SCC 259 at paragraph no.14. Mr. Basu further relies upon the decision of **Rammi alias Rameshwar vs. State of M.P.** reported in (1999) 8 SCC 649.

8. The sum and substance of Mr. Basu's argument is that the court found that the documents would be necessary to explain the confusion which had been

created by the questions put to the PW1 in the cross-examination.

9. The question which arises before this court is whether the PW1 should be recalled and be allowed to tender certain documents after the cross-examination was complete.

10. On an analysis of the questions put by the defendants in the cross-examination of PW1 and the tenor and nature thereof, I find that they are with regard to the directorship of the company and the profit and loss account. Whether the plaintiff was the director of the company either in his professional capacity or as a shareholder; whether in the profit and loss accounts the name of the director had been mentioned; whether the profit and loss accounts had not been filed only to suppress the issue of thika tenancy; whether two other tenants were inducted in the property in question, were the question which gave rise to filing the application for recall.

11. The plaintiff/PW1 has responded to such questions in the cross-examination with specific answers. The suggestions have also been controverted.

12. The profit and loss accounts or the resolution of the board by which the petitioner has been appointed as a director, cannot be allowed to be filed at this stage by recalling the PW1. The evidence of deposition of PW1 is clear and no doubt has been

created either by the questions or the answers. The questions were simple and straight. The answers were also either in the affirmative or in the negative, without any ambiguity or confusion.

13. This is a suit for declaration that the petitioner is a monthly tenant and not a thika tenant, in respect of the suit premises.

14. Under such circumstances, the order impugned is set aside. The learned court had come to a finding that even though the documents sought to be produced on recall do not appear to be entirely relevant in determining the dispute in the suit, the manner of cross-examination of the PW1 had created an uncertainty in the capacity of the PW1 to depose. This, in my view, is contradictory to the finding that the documents were not entirely relevant.

15. In the decision of **Rammi alias Rameshwar** (supra), the Hon'ble court allowed re-examination on the ground that a party could seek re-examination also to explain any matter referred to him in cross-examination, and not only to clarify doubts. In the case in hand, the new documents which were in the possession of the plaintiff were sought to be filed in court and tendered in evidence after the cross-examination was over. There was neither any necessity nor requirement for clarification of any ambiguity in the cross-examination. The answers

were firm and clear. Thus, the decision does not have any application.

16. In the case of **Ramsewak** (supra), it was held that when the evidence of the witness was unclear as to which of the two reports i.e. the FIR and inquest report, was being relied upon, the witness was allowed to be re-examined only to ascertain which of the two reports he was referring to in his cross-examination. Such situation has not cropped up in the instant case. The suit is one for declaration that the defendant is a tenant of the suit premises and not a thika tenant and also for injunction. It is the defence case that the defendant is a thika tenant.

17. Thus, the suit can proceed on the basis of the deposition and the documents already filed. In my opinion, there are no doubts with regard to deposition of the plaintiff in his cross-examination, which has to be cleared on the basis of the documents. As the suit is at the stage of evidence and there is already an order of this court for disposal of the same urgently, the suit shall be disposed of within next six months.

18. The revisional application is accordingly disposed of.

19. All the parties are directed to act on the basis of the server copy of the order.

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

(Shampa Sarkar, J.)