

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction
Appellate Side

C.O.No. 30 of 2023

Upen Roy @ Upendra Nath Roy

VS

Mahadev Mondal and Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Narendra Nath Das,

Mr. Jagesh Ch. Roy,

----- for the petitioner.

Mr. Nabarun Pal,

Mr. Abhisekh Sarkar,

----- for the respondent.

Hearing concluded on :

2.01.2024

Judgment On :

25.01.2024

M.V. Muralidaran, J.:

Heard learned counsel for the petitioner and the learned
counsel for the respondents.

2. Aggrieved by Order No.48, dated 22.2.2023 passed in Money Suit No.31 of 2014 by the learned Civil Judge (Senior Division), Jalpaiguri, the petitioner has filed the present revision petition.

3. The petitioner herein is the plaintiff in Money Suit No.31 of 2014. The petitioner has filed an application for prosecuting D.W.1 for giving false evidence before the Court. On 22.2.2023 during the course of cross-examination of DW1, the learned counsel for the petitioner insisted the learned trial Judge by filing application to record certain answers given by the DW1. The said petition was taken up by the learned trial Judge and upon hearing the learned counsel for the petitioner, rejected the same *in limine* as the same is devoid of merits. Challenging the same, the petitioner has filed the present revision petition.

4. The learned counsel for the petitioner submitted that the learned trial Judge has failed to arrive at a just and fair decision after going through the petition, records, documents and legal principles of law. The learned trial Judge misinterpreted the

existing law and has also failed to notice the scope and object of the petition and, in fact, the learned trial Judge has not exercised his jurisdiction to do justice. The finding of the learned trial Judge is completely arbitrary and the learned trial Judge ought to have exercised the jurisdiction and also ought to have recorded the reply of DW1 during his cross-examination. He would submit that without considering the merits of the petition, the learned trial Judge rejected the prayer of the petitioner. The order dated 22.2.2023 is illegal and, therefore, the same is liable to be set aside.

5. Heard the submissions of the learned counsel for the respondents on the revision petition filed by the petitioner.

6. It appears that on 31.1.2023, during the course of examination of D.W.1, the petitioner/plaintiff has filed an application for prosecuting the DW1 for giving false evidence before the Court stating that on 17.1.2023, DW1 on oath tendered the evidence before the Court and he knowingly and intentionally gave false evidence in relation to Ex.No.1 and had also intentionally denied his earlier statement made before the learned Judicial

Magistrate. Alleging that DW1 has committed offences under Sections 177, 181 and 182 of the IPC and he should be punished under the aforesaid provisions for not deposing truly and giving false evidence to cause injury to the petitioner, the petitioner has filed the petition.

7. As could be seen from the records, on 22.2.2023, the suit was taken up for cross-examination of DW1 and the cross-examination of DW1 is in part.

8. According to the petitioner, while cross-examining DW1, the learned counsel for the petitioner has put a question to DW1 suggesting whether he made certain statements in his written examination in chief. However, the learned trial Judge refused to entertain such question as it is a matter of record and not relevant in view of the provisions of the Indian Evidence Act. At that stage, the learned counsel for the petitioner filed a petition alleging that the learned trial Judge refused to record certain deposition of the DW1 and, in the interest of justice, the learned trial Judge should have recorded such deposition.

9. The said request made by the petitioner has been considered by the learned trial Judge and rejected *in limine*. The operative portion of the order of the learned trial Judge is quoted hereunder for ready reference:

"The petition filed by the Ld. Advocate for the plaintiff is considered and rejected in limini as it is devoid of merit.

In the aforesaid petition Ld. Advocate for the plaintiffs made certain tacit aspersions against the presiding officer of this court. As such, the matter is adjourned for the day and this court fixes next date in this suit after six months from this day with liberty to the plaintiff to take appropriate step u/S 24 of CPC, if he deems fit and proper."

10. According to the learned counsel for the petitioner, the learned trial Judge has wrongly adjourned the suit for six months and wrongly given liberty to transfer the suit from his Court without looking into the further consequences of justice delivery system.

11. In the order under challenge, the learned trial Judge clearly recorded that the learned advocate for the plaintiff made

certain tacit aspersions against the Presiding Officer of the Court. As such, the matter is adjourned for the day.

12. It is apposite to note that learned counsel appearing for the parties before the trial Court cannot cast aspersions on the reputation or integrity of the Presiding Officer. Any such attack on the reputation or integrity of the Presiding Officer would amount to contempt of court against the advocate who indulged in such act. Casting aspersions on the Presiding Officer would definitely tantamount to interference in the justice delivery system.

13. The Presiding Officer of the Court knew about the demeanor of the witness as well as the learned counsel who is examining/cross-examining such witness. That apart, the Presiding Officer would know the recording of the relevant deposition given by the witnesses and learned counsel cannot dictate the Presiding Officer to record irrelevant deposition given by the witness. Therefore, when the learned counsel for the petitioner/plaintiff has casted aspersions on the Presiding Officer of the Court, the trial Judge was right in adjourning the matter and has also rightly granted liberty to take steps under Section 24 of CPC. Such an

observation and the liberty granted by the learned trial Judge cannot be said to be arbitrary.

14. On an overall analysis of the matter, this Court is of the view that there is no valid ground made out by the petitioner to exercising the revisional jurisdiction in the matter and also there is no perversity in the impugned order of the trial Judge. Therefore, the present revision petition is liable to be dismissed.

15. In the result, CO 30 of 2023 is dismissed. There shall be no order as to costs.

(M.V. Muralidara, J.)