

Ct. No.3
65
BP

**10.07.
2024**

**In the High Court at Calcutta
Jalpaiguri Circuit Bench**

C.O. 97 of 2024

**Smt. Anamika Mukherjee (Sinha)
-Versus-
Sri Amit Sinha**

Mr. Jagriti Mishra
Mr. Avrojoyti Das
Mr. Rajdeep Das
...for the petitioner

Mr. Hillol Saha Poddar
..for the opposite party

Assailing order no. 21 dated 29th April, 2024
present application under Article 227 of the
Constitution of India has been preferred by the
petitioner contending that the petitioner as plaintiff
had filed a suit for dissolution of marriage which is
pending before the learned Additional District Judge,
2nd Court, Siliguri.

The petitioner submits that after cross
examination of the plaintiff's witness the opposite party
had tendered his examination-in-chief and has
exhibited documents.

The main grievance ventilated in the present application is that learned trial judge by the impugned order dated 29th April, 2024 had closed the evidence of DW-1, only on the ground that learned advocate for the petitioner loudly asked the defence witness to answer his question.

Another grievance ventilated herein is that the trial judge marked documents as exhibit being D-1, D-2 and D-3 when those documents were not produced by the defendants in the list of documents and also no leave had been taken from the court to which the advocate for the petitioner raised objection before the trial judge as such procedure in marking the document exhibit is against the provision of Order 8 Rule 1(a) of the Code of Civil Procedure.

Thereafter the learned advocate for the defendant/ opposite party filed a petition supported by an affidavit for marking documents as exhibit under Order 8 Rule 1(a) to which the petitioner raised vehement objection but learned trial judge allowed the petition filed by defendant and heated arguments were exchanged in the court room which has been reflected in Order No.21 dated 29th April, 2024.

Learned counsel appearing on behalf of the

petitioner submits that learned trial judge while passed the order impugned had acted beyond the scope of Section 137 of the Indian Evidence Act and also erred in law and facts in closing the cross-examination of the defendant's witness being DW 1 arbitrarily. He further submits that advocate for the plaintiff put questions to the witness in a loud voice, cannot be the ground for closing cross examination of plaintiff and as such he has acted beyond his jurisdiction and thereby the petitioner herein has suffered a lot for no fault of her own.

In this context, learned counsel for the petitioner relied on a judgment passed by a Co-ordinate Bench of Madhya Pradesh High Court in Miscellaneous Criminal Case No. 35901-2021 (Sachin s/o Dinesh Parmar vs. State of Madhya Pradesh) and referred paragraphs 7 and 8 which runs as follows:

7. Having said so, this court is also of the considered opinion that cross-examination of a witness is an art which, though, can be performed by any lawyer in a black coat but it is very difficult to master the same as it takes years of hard work and exposure to trials that one can have some expertise in it. It is only through a long and hard exercise of trial and error method that a lawyer learns the art of cross examination but if the judge presiding over the matter is impatient or edgy, it not only culminates into an order like the impugned one, but also hampers the overall learning process or grooming of a lawyer who, before becoming an expert trial court lawyer, is bound to falter many a times by asking irrelevant or inadmissible questions to a witness in the box. Thus, it is expected from the judges of the

Trial court to be patient and tolerant in their approach towards the Trial Court lawyers during the examination of witnesses.

8. In the considered opinion of this Court, if the learned Judge was of the opinion that despite his warnings the counsel appearing for the petitioner has continued to ask irrelevant questions, then other modes were also available to the learned Judge of the trial court as are prescribed in the Evidence Act, 1872 from Sections 146 to 152 and in some exceptional cases, the learned judge may also resort to the measure like imposing cost on the counsel for repeatedly and recklessly asking the irrelevant and inadmissible questions but, instead of taking resort of such procedure, the learned Judge has closed the right of the accused to cross examine the witness, which cannot be countenanced in the eyes of law.

Accordingly the petitioner has prayed for setting aside the order impugned.

Learned counsel appearing on behalf of the opposite party submits that his client should get opportunity to adduce evidence and order may be passed without prejudice to his client's right to adduce further evidence. He further submits that the document which sought to be marked as exhibit is the document of the plaintiff. He further submits that he has filed application under Order 8 Rule 1(a) of the Code of Civil Procedure and the court below after considering his application has marked those documents as exhibit and as such the order impugned does not call for interference by this court.

I have considered submissions made by both

the parties.

The main grievance ventilated herein by the petitioner is that the court below has passed the order impugned depriving the plaintiff/petitioner from his legitimate right of cross-examining the witness for no fault of her own and secondly, the court below has marked three documents, out of four documents filed by the defendant as D-1 to D-3, in spite of the fact that the defendant had not taken any leave from the court under Order 8 Rule 1(a) of the Code and thereby the said order marking the documents exhibit has been passed in violation of the mandatory provision of law and he has marked the 4th document as exhibit without recording that the plaintiff/petitioner has raised objection in marking the said document as exhibit, since no leave has been granted earlier.

Having considered the facts and circumstances of the case and relying upon the principles as laid down by the Apex Court in such circumstances in *Bipin Shantilal Panchal Vs. State of Gujarat and Another* (2001) 3 SCC 01 the present Application is hereby disposed of directing the court below to mark the document D-4 as exhibit with objection, keeping open the evidentiary value of D-1 to

D-4 for decision at the time of final hearing of the suit.

Since prima facie it appears that the plaintiff herself was not responsible for the impugned order by which the court below has closed the cross-examination of DW-1, the order impugned is hereby modified to that extent with a direction upon the court below to allow the plaintiff to make further cross-examination of defendant's witness namely DW-1.

C.O. 97 of 2024 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)