

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA No. GA /1/2024
APOT 57 OF 2024
WITH
RVWO 50 OF 2023

BANK OF BARODA
VERSUS
SANKAR LAL SAHA AND ORS.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 26th February, 2024

Appearance:
Mr. Meghajit Mukherjee, Adv.
Ms. K. Mukherjee, Adv.
Mr. Manas Dasgupta, Adv.

Mr. Anupam Dasadhikari, Adv.
Mr. Deva Nand Misra, Adv.
Mr. Prashant Kumar Singh, Adv.
Mr. P. Mishra, Adv.

The Court: Order in terms of prayer (a) of the stay petition.

We formally admit the appeal.

Having heard learned counsel for the parties, we are in a position to dispose of the appeal, dispensing with all formalities.

This is a suit on transfer from a lower court. The evidence of the plaintiffs, the respondent nos. 1 and 6 in this appeal was concluded in or about 2006 in the court below. Thereafter, the suit was transferred to this court. Now, further witness action is continuing in this court before the learned trial judge. The defendant, Smt. Ratna Sarkar being the respondent no.1 in this appeal is adducing evidence.

At that stage by the impugned judgment and order, the prayer of the plaintiffs to recall their witness and adduce further evidence was allowed.

The appellant, defendant no.3 is seriously aggrieved by this order.

Mr. Meghajit Mukherjee, learned counsel for the appellant, submits that after closure of the plaintiffs' evidence and passage of 17 years, they should not be allowed to re-open their evidence.

Mr. Dasadhikari, learned advocate appearing for the respondent nos. 1 and 6 submits that certain documents which are very material for the purpose of determination of the controversy in this suit need to be tendered in evidence and considered at the trial.

Now it cannot be denied that these documents were very much available when the said respondents were adducing evidence in the learned court below. Why these documents were not produced is not at all clear. The details of these documents are described in paragraphs 9 and 12 of the application filed by the said respondents in the trial court being GA No.5 of 2023 for recalling their witness.

However, for complete determination of the issues involved in this suit and for the ends of justice, we allow the respondent nos. 1 and 6, to bring on record these documents by proper tender thereof in accordance with law in the trial court. We make it absolutely clear that the said respondents would only be allowed to produce their documents to be tendered and marked as exhibits, upon proper proof. They shall be allowed to rely on these documents after proof. They shall not be allowed to adduce any further oral evidence to improve their case. The defendants would have a right to cross-examine the said respondents' witness.

We direct that the learned trial judge gives this opportunity to the said respondents.

After this exercise is over, the defendants might proceed with their evidence.

The appeal (APOT/57/2024) and stay application (IA No. GA/1/2024) are disposed of.

As affidavits have not been invited, the allegations contained in the stay application are deemed to have been not admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

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