

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

RVWO/50/2023
IA NO: GA/1/2023

SANKAR LAL SAHA
VS
RATNA SARKAR AND ORS.

BEFORE:
The Hon'ble JUSTICE SUGATO MAJUMDAR
Date: 8th January, 2024

Appearance:

Mr. Siddhartha Banerjee, Adv.
Mr. Anupam Das Adhikari, Adv.
Mr. Deva Nand Misra, Adv.
Mr. Prashant Kumar Singh, Adv.

...for the Plaintiff

Mr. Meghojit Mukherjee, Adv.
Mr. Manas Dasgupta, Adv.

...for the Defendant no. 3

The Court: Review Application 50 of 2023 is filed for review of the Order passed by this Court on 26th September, 2023 whereby GA 5 of 2023 was dismissed. GA 1 of 2023 is filed for condonation of delay in filing the review application and to pass appropriate orders.

GA 5 of 2023 was filed with a prayer to recall PW 1 for the purpose of tendering documents which the Plaintiffs relied on, with a further prayer of grant of leave for filing additional Judge's Brief of Documents.

This Court in terms of the impugned order dismissed GA 5 of 2023 on the ground that the Plaintiffs went into hibernation for the last seventeen years and suddenly came to understand or realize that some documents are there, not mentioned in the application, which are to be filed. On that ground the application was dismissed.

Delay, if any, is condoned.

Affidavit-in-Opposition is filed by the Defendants.

Mr. Banerjee, the Learned Counsel for the Plaintiff submitted that after PW 1 was examined, "some of the documents, which were not in the possession of the Petitioner at the time of adducing evidence before the Learned Court below" are now in the possession of the Petitioner. He invited attention of this Court to Para. 12 of GA 5 of 2023 where certain documents were mentioned, namely, Judgment and Order dated 20th August, 2014 passed by the Learned 1st Special Court, Survey Building at Alipore in Special Case No. 2 of 2000, Special Case No. 3 of 2000, Special Case No. 4 of 2000, Special Case No. 5 of 2000 and Special Case No. 7 of 2000. These documents were not also incorporated in the Judge's Brief of Documents by inadvertence. At the time of adducing evidence by the PW 1 in the year 2006 the said Judgments were not passed. As such it is not that from last seventeen years the Plaintiff failed to adduce those documents. He further submitted that adducing of these documents is absolutely essential to do complete justice to the parties and to prevent miscarriage of justice.

Affidavit-in-Opposition admits that these documents were germane for adjudication of dispute involved in the present suit. However, it is contended that provision of Order XVIII Rule 17 cannot be used to fill up omission in an evidence already led by a witness or filling a lacuna in a case. The Learned Counsel for the Defendant further submitted that GA 5 of 2023 was dismissed on the ground of inordinate delay, by this Court. Therefore, there is no reason to review the order passed by this Court on 26.09.2023.

I have heard rival submissions.

This Court while passing the Order dated 26.09.2023 dismissing GA 5 of 2023 observed that there was an unjustifiable delay of seventeen years for filing the recalling application. It was also observed by this Court that no documents were specified in the application. However, Mr. Banerjee invited application by this Court to Para. 12 of GA 5 of 2023 which was not highlighted by the arguing Counsel at the time of hearing of that application. These documents were certified copies of the judgments passed on 20.08.2014. At the time of examination of PW 1, obviously those documents were not in existence.

It is settled rule that a witness cannot be recalled to fill up lacuna or omission in evidence. It is also settled law that for proper adjudication of disputes, Court can recall examination of a witness under Order XVIII Rule 17 of C.P.C. This can be done *suo motu* by a Court without waiting for any formal application. The Affidavit-in-Opposition contends that these documents were germane to adjudicate upon the instant suit. This admission repels the suspicion that evidence might have been adduced to cure lacuna of this case. The admission invites this Court to consider

those documents, namely, the Judgment and Order dated 20.08.2014 passed by the Special Court, Alipore, for the purpose of proper adjudication of the instant suit.

In view of discussions above, this Court is inclined to allow the review application.

The Order passed by this Court dated 26.09.2023 in respect of GA 5 of 2023 stands modified to the extent that PW 1 shall be recalled and re-examined and adduce relevant evidence and documents obtained by PW 1 subsequent to his examination as a witness in this suit. However, it is made clear that PW 1 shall be recalled for examination and cross-examination after completion of examination of the present witness.

Accordingly the review application being RVWO No. 50 of 2023 along with GA 1 of 2023 stands disposed of.

The suit will appear in the list on 2nd February, 2024 under the heading of “Witness Action” for examination of witnesses.

(SUGATO MAJUMDAR, J.)