

Court No. 6
(265719)

05.05.2025
(A 41)
(S. Banerjee)

CO 1148 of 2025

Kamal Kanti Nag & Ors.
Vs.
Papai Das & Anr.

Mr. Supratim Dhar, Sr. Advocate
Mr. Dhananjay Nayak

...for the petitioners

Mr. Anirban Banerjee
Mr. Rajsekhar Basu
Mr. Sayantan Banerjee

...for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No. 93 dated February 20, 2025 passed by the learned Civil Judge (Jr. Division), 1st Court, Barasat, North 24 Parganas in Title Suit No. 505 of 2011. By the order impugned the application filed by the petitioner on May 7, 2024 praying for an order to mark the certified copy of the plaint, petition for withdrawal and the last order of Title Suit No. 357 of 2007 passed by the learned Civil Judge (Jr. Division) 1st Court at Barasat as exhibits stood rejected.

The Hon'ble Division Bench in SAT 185 of 2022 passed an order dated October 18, 2023 thereby restoring the suit to its original file and number with

a direction upon the learned trial judge to fix a date for cross-examination of the plaintiffs' witness and permit the defendant to cross-examine the witness strictly in terms of law laid down by the Hon'ble Supreme Court in *Modula India -Vs.- Kamakshya Singh Deo*, reported at (1988) 4 SCC 619.

It is not in dispute that the defence of the petitioners herein was struck out.

After remand the learned trial judge fixed a date for cross-examination of the PW-1. Thereafter, the petitioners filed an application praying for marking the certified copy of the plaint, withdrawal petition and the order passed in Title Suit No. 257 of 2007 as exhibits.

Mr. Dhar submits that in order to contradict the PW-1, it is necessary that the attention of the PW-1 should be drawn to the certified copy of the plaint, petition for withdrawal and the order passed in Title Suit No. 357 of 2007 and for such purpose, the petitioners filed the impugned application. He submits that Section 145 of the Evidence Act permits contradicting the witness with regard to such documents.

Section 145 of the Indian Evidence Act states that a witness may be cross-examined as to previous

statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be drawn to those parts of it which are to be used for the purpose of contradicting him.

Section 145 of the Evidence Act applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of the proceeding.

Section 145 of the Evidence Act cannot come to the aid of the defendant, whose defence has been struck off, to present his own case which is impermissible.

The learned trial judge was right in rejecting the prayer for marking the said documents as exhibits. This court is not inclined to interfere with such order.

It appears from the impugned order that a date was fixed for further cross-examination of PW-1.

It would open to the petitioners herein to cross-examine the PW-1 in accordance with law keeping in mind the decision of the Hon'ble Supreme Court in the case of *Modula India (supra)* as reiterated by the

Hon'ble Supreme Court in SAT 185 of 2022 by order dated October 18, 2023 laying down the limited scope of cross-examination of the plaintiff's witness.

Accordingly, the civil revision application stands disposed of.

(Hiranmay Bhattacharyya, J.)