

M/L - 56
02.01.2025
Court. No. 5
S.Kundu

C.O. 1269 of 2024

Sami Mubarki
Vs.
Anjana Daw & Ors.

Mr. Abhijit Ray,
Mr. S. Nandy,
Mr. Md. Ayaan,
Ms. Debarna Nandy,
Ms. Rachayeeta Mishra

...for the petitioner.

Mr. Jayanta Sengupta,
Mr. Ayan Mitra

...for the opposite parties.

1. Challenging the Order No. 30 dated 5th February, 2024 and Order No. 31 dated 14th March, 2024 both passed by the learned 11th Bench, City Civil Court, Calcutta in T.S. No. 1931 of 2019 the instant revisional application has been filed.
2. It is the petitioner's case that in a suit for declaration and recovery of possession while the cross-examination of plaintiff's first witness was going on since the defendant's advocate was not present, the learned Judge had abruptly closed the cross-examination and witness action of the plaintiff's witness, by order dated 5th February, 2024.
3. Although, an application for recall of the plaintiff's first witness was filed immediately, the learned Judge by the order dated 14th March, 2024 by recording that the

petitioner could not make out sufficient grounds for non-appearance of the advocate in Court on 5th February, 2024 had rejected such application. The learned advocate representing the petitioner would submit that the cross-examination on the point of retention of tenancy rights on the ground of dependency on the death of the original tenant is not complete and as such he submits that unless the petitioner is given an opportunity to cross-examine the plaintiff's witness on the said ground, the petitioner shall suffer irreparable loss and injury. He on behalf of the petitioner undertakes that the cross-examination shall be concluded within an hour on the date to be fixed by the Court and the same shall be restricted only to the retention of the tenancy rights on the ground of dependency on the death of the original tenant.

4. Having heard the learned advocates appearing for the respective parties though noting that the conduct of the petitioner has not been satisfactory to say the least and though the learned Court had repeatedly afforded the opportunity to the petitioner, the petitioner had failed to avail the same. However, for ends of the justice, I am of the view that one more opportunity should be afforded to the petitioner to cross-examine the plaintiff's first witness on the point of retention of the tenancy rights on the ground of dependency on the death of the original tenant qua the suit premises.

5. I have been informed by the parties that the next date fixed before the learned Court is 7th February, 2025. By consent of the parties on the next date fixed before the learned Court i.e. 7th February, 2025 the plaintiff's first witness will be present in Court and the petitioner/defendant no. 2 shall be permitted to cross-examine the said witness in Court on the point of retention of the tenancy rights on the ground of dependency on the death of the original tenant qua the suit property only. The cross-examination must be concluded on the said date itself without granting any unnecessary adjournments to any of the parties. Since, it has been informed by the parties that the learned 11th Bench, City Civil Court is at present lying vacant, the charge Court, if the learned Court is not filled up by the next date, is requested to take up the hearing of the suit on the date aforementioned and to conclude the cross-examination of the plaintiff's first witness on the said date itself in the manner directed hereinabove.
6. Having regard to the aforesaid, the Order no. 30 dated 5th February, 2024 and Order no. 31 dated 14th March, 2024 stand modified to the aforesaid extent.
7. With the above observations and directions, the revisional application is disposed of.

(Raja Basu Chowdhury, J.)