

SaktipadaRudra&Ors.
Vs.
Abhinandan Das &Ors.

Mr. Jayanta Kumar Das
Ms. Madhumanti Das
... for the petitioners

1. Affidavit-of-service filed in
Court today is taken on record.

2. Despite service, none appears on
behalf of the opposite party.

3. Challenging the Order No. 184
dated 31st July, 2024 passed by the learned Civil
Judge (Junior Division), 3rd Court, PaschimMedinipur
whereby the petitioners' witness action was closed,
the instant revisional application has been filed.

4. It appears that the instant suit
has been filed by the plaintiffs for declaration and
permanent injunction. The plaintiffs/petitioners'
case is that when the matter was fixed for further
evidence by the plaintiffs, the plaintiffs/petitioners
had filed an application before the learned Court,
inter alia, praying for issuance of summons on Samir
Kumar Roy for enforcing his appearance as a witness
in the suit. By order dated 22nd May, 2024, the
learned Court was, inter alia, pleased to allow the

said application by directing issuance of summons on the witness noted in the plaintiffs' application. On the next date fixed for further evidence i.e. on 31st July, 2024, though according to the plaintiffs, the summoned witness was present, the learned Court by recording, no 'hazira' and 'affidavit-in-chief' had been filed by the plaintiffs' summoned witness was pleased to close the plaintiffs' opportunity to lead further evidence.

5. Challenging the aforesaid order dated 31st July, 2024 the instant revisional application has been filed.

6. By order dated 17th July, 2024 a Coordinate Bench of this Court while directing service of the revisional application on the opposite parties had stayed all further proceedings in the suit. On 23rd December, 2024 when this matter was taken up for consideration since the petitioners could not demonstrate service on all the defendants/opposite parties though, some of the defendants had been served, this Court while extending the interim order for a limited period, directed the petitioners to serve the said order on the opposite parties. Pursuant to the aforesaid, the petitioners had served the order on the opposite parties and their

advocates before the learned Trial Court. Despite service none appears on behalf of the opposite parties.

7. Mr. Das, learned, advocate representing the petitioners by drawing attention of this Court to the certified copy of the 'hazira' filed before the learned Court on 31st July, 2024, submits that the 'hazira' clearly demonstrates that Samir Kumar Roy, the summoned witness and was present in Court. According to him, since the witness had been summoned, there was no question of such witness filing any affidavit-in-chief. He would submit that the learned Judge had exceeded his jurisdiction in closing the plaintiffs' witness action on the ground that summoned witness had not filed affidavit in chief. He would submit that this Court may set aside the order and direct the learned Court to pass appropriate order for the summoned witness to appear and lead evidence.

8. Heard the learned advocate for the petitioners and considered the materials on record. Admittedly, in this case by order dated 22nd May, 2024 the learned Court had allowed the application by directing issuance of summon on the witness noted the application. From the certified copy of the 'Hazira' it appears that the summoned witness was present on 31st July, 2024. The

witness, however, did not file affidavit-in-chief. The learned Judge by noting that the witness did not file hazira and affidavit-in-chief had closed the plaintiffs' opportunity to lead further evidence. The aforesaid observation appears to be irregular so far as the summoned witness is concerned. Ordinarily, when an order is passed by a Court summoning a witness, no affidavit-in-chief is required to be filed, though the Court may in its discretion direct such witness to file affidavit-in-chief. There appears to be no such order directing the summoned witness to file affidavit-in-chief. The above appears to have been overlooked by the learned Judge. Insofar as non-filing of hazira is concerned such observation appears to be perverse. Having regard thereto, the order dated 31st July, 2024 in my view cannot be sustained.

9. Thus, while setting aside the order dated 31st July, 2024, I direct the learned Court below to permit the plaintiffs an opportunity to lead evidence through the summoned witness Mr. Samir Kumar Roy and for the said purpose the learned Court may fix a date and issue a fresh notice on Mr. Samir Kumar Roy for his appearance. The Court may in its discretion direct the witness to file affidavit-in-chief by passing appropriate

order.

10. With the above observation and direction, the instant revisional application stands disposed of without any order as to costs.

11. All parties shall act on the basis of server copy of this order duly downloaded from this Court's official website.

(Raja BasuChowdhury, J.)