

Sl. 37
02.05.2025
Court No.6
BP

C.O. 4455 of 2024

Smt. Shyamashree Sengupta @ Sen
-versus-
Smt. Sabita Saha & Ors.

Mr. Amar Nath Sen
Mr. Malay Dhar
..for the petitioner

Mr. Subhadeep Sen
Mr. Satyajit Senapati
Mr. Rahul Nag
Mr. D.K. Kar
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for eviction of a trespasser and is directed against orders dated August 21, 202, October 3, 2024 passed by the learned Judge, 10th Court at City Civil Court, Calcutta in Title Suit No. 314 of 2018.

By the order dated August 21, 2024 the prayer for adjournment at the instance of the defendant/petitioner herein stood rejected and the evidence of the defendant witness stood closed.

3rd October, 2024 was fixed for hearing of the argument and on that date also the petitioner filed an application praying for adjournment. The prayer for adjournment was allowed by the learned trial judge on

3rd October, 2024 as a last chance and 7th January, 2025 was fixed for hearing of argument.

Mr. Dhar, learned advocate appearing for the petitioner submits that the prayer for adjournment was sought for on the ground that the petitioner suffered an injury on her left wrist joint and for which she could not attend the court for giving evidence. He further submits that one opportunity may be afforded to the petitioner to give evidence.

Such prayer is vehemently opposed by the learned advocate for the opposite parties.

By drawing the attention of the Court to the ordersheets appended to this civil revisional application he submits that the petitioner prayed for adjournment on various occasions and is trying to delay the disposal of the suit for eviction. He submits that no further opportunity should be granted to the petitioner to give evidence.

Heard the learned advocates for the parties and perused the materials placed.

On a query of the Court Mr. Dhar, learned advocate appearing for the petitioner, in his usual fairness, submits that no application for recalling of the orders dated 21st August, 2024 and 3rd October, 2024 has been filed before the learned trial judge. He submits that since the petitioner was not fit at the relevant point

of time such application could not have been filed at the relevant point of time.

From the medical documents annexed to this application this Court finds that the age of the petitioner as mentioned in the doctor's prescription is 73 years. It further appears that the petitioner herein suffered an injury in the left wrist joint and was under the treatment of a doctor at the relevant point of time. This Court is of the considered view that an opportunity should be afforded to the petitioner to give evidence. The question that arises for consideration is whether the petitioner should be afforded an opportunity to file an application for recalling of the orders dated August 21, 2024 and October 3, 2024.

At this stage the learned advocate appearing for the opposite parties submits that if such liberty is granted the same would result in further delay of the hearing of the suit.

In view thereof, this Court is inclined to allow the prayer of the petitioner to afford a last opportunity to give her evidence. In the event the petitioner files an application before the learned trial judge for fixing a date for evidence of the petitioner herein namely, Smt. Shyamashree Sengupta before the learned trial judge on or before May 13, 2025 along with a put up petition upon serving an advance copy of the same to the learned advocate on record of the opposite parties

before the trial judge and the learned trial judge shall consider such prayer and fix a short date and proceed in accordance with law thereafter.

It is made clear that in the event the petitioner does not file the application within the time limit mentioned herein before this order shall stand automatically recalled without any further reference to this Court.

For the reasons as aforesaid, the orders dated August 21, 2024 and October 3, 2024 are set aside as well as the orders passed subsequent thereto are set aside.

With the above observations and directions, C.O. 4455 of 2024 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)