

C.O. 4481 of 2024

Arijit Biswas
-versus-
Aloke Kumar Biswas

Mr. Anindya Lahiri, Sr. Adv.
Mr. Agniswar Dutta Gupta
Mr. Anish Chakraborty
..for the petitioner

Mr. Rohit Das
Mr. Indradip Das
Mr. Kishwar Rahman
Mr. Vishesh Pandey
Ms. Anugraha Sudas
..for the opposite party

Affidavit of service filed today is taken on record.

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. 20 dated 22nd November, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Title Suit No. 723 of 2021.

By the order impugned the prayer for adjournment at the instance of the defendant was rejected and the evidence of the defendant was closed.

Mr. Lahiri, learned senior advocate appearing for the petitioner submits that the prayer for adjournment was made as the petitioner underwent an eye surgery. He submits that the learned trial

judge did not take into consideration such fact while rejecting the prayer for adjournment.

Per contra, the learned advocate appearing for the opposite party submits that several opportunities were given to the defendant to depose and in spite of a last chance being given he did not avail of such opportunity. He further submits that the court allowed the prayer for adjournment on 1st October, 2024 with cost of Rs. 300/- but the petitioner also did not pay the cost. He submits that the petitioner is trying prolong the instant suit and for such reason the learned trial judge was right in closing the evidence of the defendant's witness.

Learned advocate for the opposite party places reliance upon the provisions laid down under Section 35D of the Code of Civil Procedure in support of his contention that the court has the power to impose cost for causing delay. He placed reliance upon a decision of the Hon'ble Supreme Court in the case of Manohar Singh vs. D.S. Sharma & Anr. reported in (2010) 1 SCC 53 in support of such contention.

Record reveals that the petitioner filed an application praying for an adjournment on 22nd November, 2024. After going through the said application this Court finds that it has been specifically stated therein that the defendant witness

was supposed to adduce evidence on that day but as he underwent an eye surgery on 5th November, 2024 and has been advised to take bed rest, for such reason he was not in a position to appear before the court to adduce evidence on that date.

The discharge certificate has also been annexed to this application under Article 227 of the Constitution of India. The certificate of the treating doctor dated 13th November, 2024 has also been annexed to this civil revisional application. From the aforesaid certificates it appear that the petitioner underwent a surgery for retinal detachment on 5th November, 2024 and he was advised to lie down in prone situation throughout and to take rest at home and he was not allowed to move out till directed otherwise.

After going through the medical documents filed by the petitioner herein this Court is of the considered view that the petitioner made out a sufficient ground for adjournment on 22nd November, 2024 but the learned trial judge failed to appreciate such ground. However, this Court cannot also lose sight of the fact that the petitioner did not avail of several opportunities given to him earlier to depose. However, taking into consideration the fact that the date was fixed on 22nd November, 2024 for evidence as last chance and taking note of the

medical condition of the petitioner as would be evident from the medical documents filed in connection with the civil revisional application, this court finds that the petitioner should be allowed an opportunity to give evidence in the suit but subject to certain stringent condition.

In Manohar Singh (supra) the plaintiff therein sought for an adjournment on the ground that he wanted to move an application for transfer of the suit. The said decision being distinguishable on facts cannot be applied to the case on hand.

For the reasons as aforesaid, this Court is inclined to allow the petitioner to give evidence on the date to be fixed by the learned trial judge subject to payment of cost assessed at Rs. 20,000/- to be paid to the opposite parties herein through the learned advocate on record of the opposite party herein before the learned trial judge on or before 7th March, 2025.

Accordingly, the impugned order is set aside. The learned Civil Judge, 2nd Court, (Senior Division) at Barasat is requested to fix a date for evidence of the defendants witness (DWs) immediately after 7th March, 2025.

Needless to mention that if the cost as directed hereinabove is not paid within the time limit mentioned hereinbefore, this order shall

automatically stand recalled without any further reference to this Court.

The learned trial judge is requested to dispose of the suit expeditiously without granting any unnecessary adjournment to either of the parties.

Accordingly, C.O. 4481 of 2025 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.)