

Misc. Judicial (Act viii) 03 of 2017

Order No. 52
Dated 07.09.2019

Today is fixed for hearing of petition dated 26.08.2019 submitted by the O.P. under section 138 of Indian Evidence Act, read with Order 18 Rule 17 and section 151 of the C.P.C.

Parties file *hazira*.

Written objection has been submitted against the petition by the petitioner. Copy served. Objection endorsed.

Heard. Considered.

Perused all materials lying in the record.

Submitting this instant petition, the OP no. 1 prays for recalling the PW-1 as certain developments has taken place during the pendency of the proceedings, which prompted her to submit an application under Order 8 Rule 9 of C.P.C., read with section 151 of C.P.C on 21.06.2019 and was allowed on 02.08.2019 *vide* Order No. 46.

The answering OP has also submitted an additional written objection and was contended that the facts about subsequent events are required to be confronted to PW-1 in her cross examination. Hence this prayer.

In the written objection, the petitioner contended that the prayer of the OP no. 1 is vague in so much, as the same does not disclose any particular event or question which is required to be confronted / put to the PW- 1. Citing such reasons, the petitioner has prayed for rejection of the petition.

Perused the pleadings of the parties, especially the petition under Order 8 Rule 9, read with section 151 of C.P.C. as well as the additional written objection submitted on behalf of O.P. no. 1. Also perused the evidence of PW-1.

Upon careful consideration of all the materials, I am of the opinion that the objection advanced by the petitioner is devoid of any legal or factual merit. Perusal of the additional written objection submitted by the OP no. 1 reveals that this instant petition has not been submitted for putting some roving questions to the PW-1. Rather the periphery of such further proposed cross examination can be gathered upon perusal of the additional written objection dated 23.06.2019.

In the circumstances, if the OP no. 1 is not allowed to confront / put the relevant facts to the PW- 1 in cross examination on recall, her interest shall be affected prejudicially. Moreover, effective adjudication of the *lis* might also suffer in absence of such further cross examination on recall.

Consequently, the petition under section 138 of the Indian Evidence Act, read with Order 18 Rule 17 and section 151 of C.P.C. submitted by OP no. 1 on 26.08.2019 merits to be allowed in the light of the foregoing deliberations.

Hence, it is

ORDERED,

that the petition under section 138 of Indian Evidence Act, read with Order 18 Rule 17 and section 151 of C.P.C. is allowed on contest without any costs.

To 21.11.2019 for further cross examination of the PW- 1 on recall. Parties must come ready.

Dictated & corrected by me

Additional District & Sessions Judge
1st Court, Jalpaiguri.

Additional District & Sessions Judge
1st Court, Jalpaiguri.
Date: 07.09.2019.