

Order No. 27

Dated. 05.01.2018

Petitioner files hazira through his Ld. Advocate. He also filed one petition under order 18 Rule 17 read with section 151 of CPC. The copy of which has already been supplied to the opposite party.

Opposite party file hazira through his Ld. Advocate.

Today is the date fixed for hearing of petition under order 18 Rule 17 read with section 151 of CPC filed by the petitioner on 29.06.2016.

Record is taken up for hearing of petition dated 29.06.2016.

Ld. Advocate for the petitioner submits that he intends to withdraw this application, so not pressed the said application.

Ld. Advocate for the opposite party raises no objection. As such the said petition under order 18 Rule 17 read with section 151 of CPC filed by the petitioner on 29.06.2016 is rejected for not pressed.

Now, petition under order 18 Rule 17 read with section 151 of CPC is taken up for hearing.

Ld. Advocate for the petitioner submits that in the instant O.S. case, the evidence of PW-2 Shri Narayan Das was concluded on 06.02.2016. At the time of his examination-in-chief, three questions were not asked by the Ld. Advocate for the petitioner which is very important in deciding the present suit. He further submits that as per the provision enumerated in order 18 Rule 17 of CPC, for the laches on the part of the Ld. Advocate of the petitioner, this petitioner cannot be suffered. As these questions are very vital and important question for proving of the probate case. Therefore, for ends of justice the instant petition be allowed.

Ld. Advocate for the opposite party submits that the instant petition be rejected on two grounds. Firstly, the question as mentioned in the petition under order 18 Rule 17 read with section 151 of CPC is in leading one. As per Indian Evidence Act, leading question cannot be asked in examination -in-chief. Secondly order 18 Rule 17 of CPC does not permit any party to fill up the lacuna of the case. In this regard he referred one judgement of Calcutta High Court passed by Hon'ble Justice Mir Dara Sheko in C.O. No. 2382 of 2016 reported in (2017) 3 WBLR (Cal) 410 where it is stated that "Examination of witnesses and cross examination thereof – concluded – further examination of the self same witness- permissibility in law- held, in negative – De novo evidence – not permissible in law- chance of demolition of the benefit if any derive by the opponent after completion of cross examination of such witnesses – hence no illegality on the part of trial court in rejecting the prayer of tendering the Pws for re-examination." As such, he prays for rejection of the petition.

Herd the submission of both sides perused the material on record and after going thorough the petition under order 18 Rule 17 read with section 151 of CPC, I find that the question as mentioned in the petition has already been asked by the Ld. Advocate for the

petitioner from PW 2 Narayan Das on 29th day of March, 2013 in his examination -in-chief. In the abvoe facts and circumstances the instant petition has no value. Hence, the petition under order 18 Rule 17 read with section 151 of CPC stands rejected without any cost.

Fix 09.02.2018 for evidence of OPWs.

D/c by me

Additional District Judge,
2nd Court, Bongaon, North 24 Parganas