
(2010) 11 CAL CK 0056
In the Calcutta High Court
Case No : C.O. No. 3047 of 2010

Philips Electronics India Ltd.

APPELLANT

Vs

Sanjay Chowdhury and Others

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2010) 11 CAL CK 0056

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : P.K. Datta, S.K. Datta, Rupak Ghosh and S. Banerjee, for the Appellant; Arindam Mukherjee, Nishant Kr. Saraf and Sanjoy Mondal, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is at the instance of the Defendant No. 1 and is directed against the order dated August 5, 2010 passed by the learned Civil Judge (Senior Division), Fourth Court, Alipore in Title Suit No. 73 of 1999 thereby rejecting an application dated August 5, 2010 filed by the Defendant No. 1 u/s 151 of the Code of Civil Procedure.

2. The short fact is that the opposite party No. 1 instituted the Title Suit being T. S. No. 73 of 1999 before the learned District Judge, Alipore praying for mandatory injunction, reinstatement in the employment and other reliefs. In that suit, the Defendants appeared and filed their written statements. Issues were framed. The suit was at the stage of recording statements of the witnesses on behalf of the Petitioner. The Petitioner sought for several adjournments at the time of recording evidence. Ultimately, the learned Trial Judge closed the evidence on behalf of the Petitioner and fixed the next date for hearing argument. Then, the Defendant No. 1 filed an application u/s 151 of the CPC for recalling the D.W. 1 to prove two letters issued by the Defendant No. 1. That opportunity was given to the Petitioner but it failed to avail itself of this opportunity and the learned Trial Judge has again fixed the next date for

argument. Even when the learned Trial Judge granted costs of Rs. 1,000/- for allowing the application for costs have not been paid by the Petitioner. The Court observed that the Petitioner is harassing the Plaintiff in the guise of adjournments. Thus, he rejected the application and fixed the next date for hearing argument.

3. Upon hearing learned Advocate for the parties and on going through the materials on record, I find that the opposite party / Plaintiff filed the suit for permanent injunction, reinstatement in his service and other reliefs in the said suit. That suit was pending for a considerable period for adducing evidence on behalf of the Petitioner and several chances were given to the Petitioner to adduce evidence. Even after close of the evidence on behalf of the Petitioner, the learned Trial Judge granted again an opportunity to the Petitioner to adduce evidence on recall of the D.W. 1. But yet the Petitioner failed to avail itself of the opportunities on the pretext that at first the D.W.1 was out of station and on subsequent occasion he was ill. Upon such circumstances, the learned Trial Judge passed the impugned order.

4. What I find from the record is that previously the Petitioner filed an application under Article 227 of the Constitution being C.O. No. 1053 of 2008 and that application was disposed of on June 10, 2008 directing the learned Trial Judge to expedite the hearing of the suit as far as possible and to dispose of the same preferably within one year from the date of communication of the order. That revisional application was moved by the Petitioner and at its instance the said order was passed. In spite of that and even when the Court exercised its discretionary power giving several opportunities to the Petitioner, the suit was kept pending at the instance of the Petitioner.

5. However, at the time of making argument, Mr. Datta, learned Advocate appearing on behalf of the Petitioner submits that an opportunity should be given to the Petitioner again to prove the two letters dated May 25, 1996 and April 22, 1997 only as referred in the written statement filed by the Petitioner. Thus, it appears to me that those two letters are not new ones but those are related to the period prior to the institution of the suit. Now, the Petitioner wants to exhibit those two letters after availing one opportunity to adduce D.W. 1 on recall.

6. This being the position, upon due consideration of the entire matter in dispute between the parties, I am of the view that an opportunity should be given only to the Petitioner to prove those two letters only. Accordingly, this application succeeds. It is allowed with costs. The impugned order is hereby set aside.

7. The learned Trial Judge is directed to fix one date only for examination of the D.W.1 on recall to prove the two letters dated May 25, 1996 and April 22, 1997 only. After close of the evidence of the D.W.1, the learned Trial Judge shall treat the evidence on behalf of the Petitioner as closed. Such exercise must be done within four weeks from the date of communication of this order. Thereafter, he shall dispose of the suit within one month from the date of the close of the

argument.

8. Considering the circumstances, the Petitioner is directed to pay to the Plaintiff/ opposite party No. 1 herein a sum of Rs. 2,000/- as costs. This sum and the previous costs as awarded by the learned Trial Judge, if not already paid in the meantime, must be paid within 30 days from date, if default this application shall be treated as dismissed without any reference to this Court. This order is firm and mandatory.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.