

THE HIGH COURT OF MADHYA PRADESH

MP-4166-2018

(PARAS RAM Versus PRABHU DAYAL)

Jabalpur, Dated: 31-08-2018

Shri Rahul Tripathi, learned counsel for the petitioner.

Heard on admission.

This petition is filed being aggrieved by the order dated 21.08.2018 (Annexure P/2) whereby the application filed under Order 17 Rule 1 of C.P.C. was rejected and the right of the petitioner to cross-examine the witness was closed.

It is submitted by learned counsel for the petitioner that he had already filed his main affidavit under Order 18 Rule 4 of C.P.C. and on 09.08.2018 the matter was listed for his cross-examination. However, 09.08.2018 was declared as holiday and the matter was formally posted on 21.08.2018 for his cross-examination. On such date, he filed an application before the Court below stating that he had filed a miscellaneous petition against the order dated 07.07.2018, whereby the application of the plaintiff under Order 6 Rule 17 of C.P.C. was dismissed and the same is pending consideration before the High Court and on the next date of arguments, on said miscellaneous petition is 31.08.2018, he prayed that his cross-examination may be postponed till the decision of that petition.

The learned Trial Court considering the application of the petitioner and the fact that no stay has been granted in the said writ petition by the High Court rejected the prayer stating that the matter is pending adjudication since 2012 and even after more than six years, the evidence is not over, and therefore closed the right of evidence to the defendant/petitioner and fixed the matter for final arguments.

It is settled position of law that the procedure is the handmaid of the law and the interest of justice would not suffer if another opportunity to adduce evidence is extended to the

defendant/petitioner, hence this petition is allowed subject to payment of cost of Rs. 3,000/- (Rupees Three Thousand Only) to the other side/plaintiff and a single opportunity to produce his witness for cross-examination is granted to the defendant.

It is reflected from the impugned order that the matter is listed on 06.09.2018 the petitioner/defendant is directed to keep his witness present on the said date before the Trial Court for his cross-examination. If such witness is present on 06.09.2018 before the Trial Court, the Trial Court may permit for cross-examination.

It is made clear that no further opportunity on any cost shall be granted to the petitioner.

With the aforesaid direction, this petition is allowed and disposed of.

**(NANDITA DUBEY)
JUDGE**

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