

July 17, 2023
Sl. No.18
Court No.19
s.biswas

CO 1720 of 2023

Gunjan Shah
vs.
Pramod Nawalgaria and others

Mr. Indranil Nandi
Mr. Sayak Konar
Ms. Shreya Agaral

... for the petitioner

Affidavit of service filed by the petitioner is taken on record.

Despite service, none of the opposite parties have appeared. A copy of the order passed on June 9, 2023 was also served.

The learned advocate for the petitioner submits that as the examination in chief and cross-examination of the OPW1 had been over, the learned Additional District Judge, 8th Court, Barasat, North 24 Parganas, refused to recall the PW1 in order to tender some documents, which were essential for the proceedings.

The learned court below found that the application for recalling of PW1 was misconceived. In the said application dated May 12, 2023 for recalling of PW1 and to tender documents, the petitioner did not mention the contents of the documents, nature of the documents and relevance of the documents in the proceeding. Thus, the learned court below rejected the application.

In my view, the learned court below has not erred. It is the discretion of the court whether to allow the application for recalling or not. It was incumbent upon the petitioner, to establish before the learned court below, by filing a proper application, explaining the relevance of the documents sought to be tendered. Such exercise not having been done, the learned court below refused to exercise its discretion.

However, for the ends of justice, as the matter relates to the custody of the child, this court is of the view that one chance may be given to the petitioner to file an elaborate application annexing the documents, with specific averments as to the nature and character of the documents, the source of the documents and relevance of the documents sought to be produced. Once such application is filed, the opposite parties shall be allowed to file a written objection. Thereafter, the said application shall be heard afresh and decided independently, by the learned court below.

This court has not gone into the merits of the documents, but only feels that the above exercise should be undertaken for the ends of justice.

This order shall not be construed as a direction upon the learned court below to allow such application, if filed. The learned court below shall

deal with it on its own merits and decide whether to exercise discretion or not.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)