

03.10.2023
Sl. No.37(DL)
srm

C.O. No. 1989 of 2023
Smt. Mina Devi Shaw
Versus
Shri Ashok Kumar Banerjee & Ors.

Mr. Pinaki Ranjan Mitra

...for the Petitioner.

The learned Civil Judge (Junior Division), 2nd Court at Howrah, by an order dated May 2, 2023 allowed recalling of DW1 only for marking the eviction notice dated March 23, 2010, as an exhibit. Although the document was on record and the postal receipt with regard to service of the said notice had been marked as exhibit, the notice was not marked, out of a bona fide mistake. The learned court below found that the eviction notice which was already on record should be marked as an exhibit upon recall of DW1. The learned court below had given elaborate reasons as to why the DW1 should be recalled. It is a discretionary order and therefore, jurisdiction of this Court under Article 227 of the Constitution of India cannot be invoked in this case.

Two suits one for eviction and the other for declaration of tenancy are being heard analogously and the eviction notice

is a vital piece of evidence. The petitioner will get a chance of cross-examination.

The Court does not find any material irregularity in the order impugned.

The revisional application is accordingly dismissed.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)