

17.01.2024  
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AN/Ct. No.07

**CO 3431 of 2023**

**Netaji Balak Sangha & anr.  
versus  
Smt. Meena Singh & anr.**

Mr. Subhasis Chakraborty  
Mr. Amit Chowdhury  
Ms. Sushmita Kumari Singh  
... for the petitioners

Mr. Arun Kr. Singh  
Mr. Protim Chakraborty  
... for the opposite parties

Affidavit-of-service filed is taken on record.

The order no. 162 dated 18.07.2023 passed by the learned Civil Judge (Junior Division), 4<sup>th</sup> Court, Howrah in Title Suit No. 733 of 2016 is under challenge in this revisional application under Article 227 of the Constitution of India.

The petitioner is the defendant in a suit for eviction of a trespasser. The petitioner has already filed the certified copy of the record of rights in course of his evidence and the same has been marked as Exhibit-B. The said Exhibit-B, according to the petitioner, being a Photostat certified copy of the certified copy of the record of rights was not legible for which the petitioner claims to have obtained another certified copy of the record of rights from the Office of the Town Certificate Unit, Howrah. The petitioner claims that such certified copy of the record of

rights has been obtained by the petitioner after closure of the evidence of the defendant's witnesses. Since Exhibit-B is not a legible document and the petitioners have already obtained a certified copy of the self-same document from the appropriate authority, the petitioner applied for recalling of DW1 for re-examination.

Learned trial Judge rejected such application by observing that Order XVIII Rule 17 of the Civil Procedure Code should not be invoked to overcome lacuna either in the pleadings or in the evidence and also that there is no vested right upon a party to recall his witness.

Learned counsel appearing for the petitioner submits that the said document is necessary for the purpose of effective adjudication of the dispute between the parties in the suit.

Learned counsel for the opposite parties submits that the learned trial Judge rightly rejected the application for recalling as the petitioner is trying to fill up the lacuna in evidence.

It appears from the materials on record that the R.S. record of rights has already been marked as Exhibit-B in the suit. Since the said Exhibit is not legible, the petitioner after obtaining a certified copy of the self same document from an appropriate authority applied for recalling the DW1 for re-examination with the object of marking the said document as an Exhibit.

Therefore, this Court is of the considered view that the attempt on the part of the petitioner to recall his witness is not to fill up any lacuna in evidence but to introduce a legible copy of the document which has been already marked as an Exhibit.

For the reasons as aforesaid, the order impugned is set aside and the application under Order XVIII Rule 17 of the Civil Procedure Code filed by the defendants/petitioners herein stands allowed. Learned trial Judge is directed to proceed in accordance with law in terms of this order.

Thus, the instant revisional application stands **allowed**, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

**(Hiranmay Bhattacharyya, J.)**