

D/L- 24
21/02/2025
Ct. No.-6
Aritra

C.O. 255 of 2025

**Ranjit Majhi
Versus
Rita Pramanick & Anr.**

Mr. Abhijit Ray
Mr. Santu Nandy
...for the petitioner

Mr. Shyamal Chakraborty
Mr. Debajyoti Mondal
....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the alleged resistor and is directed against an order being No.246 dated January 8, 2025 passed by the learned Judge (6th Bench), Presidency Small Cause Court, Calcutta in Misc. Case No.128 of 2023.

By the order impugned the prayer of the petitioner for issuing summons upon the Swapan Das by recalling an order dated October 5, 2024 stood rejected.

Mr. Ray learned Senior advocate appearing for the petitioner submits that the summons issued to Swapan Das returned unserved and for such reason the petitioner filed this application praying for issuance of a fresh summons upon him. He further submits that the learned Executing Court closed the evidence of OPWs only for the reason that a direction for expeditious hearing has been passed by a co-ordinate Bench of this Court in CO 172 of 2024.

Per contra Mr. Chakraborty learned advocate appearing for the decree holder/opposite party herein submits that the summons issued to Swapan Das returned with the endorsement refused. He submits that the learned Executing Court was, therefore, justified in directing closure of the evidence of the OPWs. He submits that the decree for eviction was passed sometimes in the year 2022 and opposite parties have not yet succeeded in enjoying fruits of the decree.

Heard the learned advocates for the parties and perused the materials placed. The learned Executing Court in the order impugned has specifically recorded that the summon issued upon the witness, namely, Swapan Das returned unserved with the report of refusal by the agent of the witness.

Mr. Ray contends that the registered envelop was not tendered to Swapan Das and, therefore, a fresh opportunity should be given to the petitioner to produce Swapan Das as one of the OPWs in the said Misc. Case.

Such prayer is vehemently opposed by Mr. Chakraborty learned advocate for the petitioner.

However, taking note of the fact that the summons was issued upon Swapan Das and it has been recorded in the impugned order that the service of summons was refused by the agent of Swapan Das and not by Swapan Das himself and there is nothing to show that the summon was tendered to Swapan Das, this Court is of the

considered view that an opportunity should be given to the petitioner to cite Swapan Das as an OPW in the said Misc. Case but subject to payment of cost to the decree holder/opposite parties herein.

For the reasons as aforesaid the impugned order is set aside. The order dated October 5, 2024 fixing the Misc. Case for argument also stands set aside.

Liberty is given to the petitioner to produce Swapan Das as an OPW on the next date fixed i.e., on March 11, 2025 subject to payment of cost of Rs.7500/- to the decree holder/opposite parties on or before February 25, 2025. If the cost as directed hereinbefore is not paid within the time indicated, the petitioner will not be allowed to cite Swapan Das as an OPW in the Misc. Case.

The learned Executing Court is requested to dispose of the Misc. Case as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observations CO 255 of 2025 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)