

D/L- 6
02/08/2025
Ct. No.-6
Aritra

C.O. 1170 of 2025

**Subhas Sarkar
Vs.
Swapan Sarkar**

Mr. Anshunath Chakraborty
Mr. Abhijit Ch. Majumder
...for the petitioner

Mr. Swapan Sarkar
....for the opposite party (in person)

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order being No.74 dated January 16, 2025 passed by the learned Additional District Judge, 3rd Court, Barrackpore, District-North 24-Parganas in O.S. Case No.2 of 2017.

By the order impugned the application filed by the opposite party herein to examine the attesting witness stood allowed.

The learned advocate appearing for the petitioner submits that the petitioner herein raised a specific point in the written notes of argument that the Will has not been duly proved. He further submits that when the evidence of the parties have been closed and the suit has been fixed for delivery of judgment the opposite party filed the application for examination of the attesting witness.

Record reveals that the opposite party herein had examined two witnesses. The P.W.1 in his deposition stated that he had written the Will as per the direction of the testator and had signed on the same and the Will was marked as an exhibit and his signatures were also marked as Exhibit-1 series. However, the attesting witnesses of the said Will were not examined. The learned trial judge observed that the Will cannot be said validly exhibited unless at least one attesting witness has been examined and that the real truth cannot be discovered unless the attesting witness is examined and to bring out the real truth the petitioner should be given an opportunity to produce the attesting witness, namely, Sankar Sarkar and allowed the prayer for adducing the evidence of the attesting witness.

The learned advocate for the petitioner would vehemently submit that the attempt on the part of the opposite party to adduce evidence of the attesting witness at such a belated stage would amount to filling up the lacuna in evidence.

The Hon'ble Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy**, reported at **(2011) 11 SCC 279**, held that the Court may in exercise of its inherent power under Section 151 of the Code of Civil Procedure permit the production of such evidence if it is relevant and necessary in the interest of justice subject to such terms as the Court may deem fit to impose. The Hon'ble

Supreme Court further held that where the additional evidence, oral or documentary, will assist the Court to clarify the issues and will assist in rendering justice, the Court can exercise its discretion to recall the witnesses or permit the fresh evidence.

The learned trial judge in the order impugned has specifically recorded that the evidence of the attesting witness is very much necessary for the purpose of rendering justice.

The real test for allowing the prayer for adducing further evidence is whether such evidence is necessary for the purpose of rendering justice which, to the mind of this Court, stands satisfied.

For such reason this Court is not inclined to interfere with the order impugned.

Accordingly, CO 1170 of 2025 stands dismissed.

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.)