

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdictionn

Appellate Side

Present :

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1199 of 2025

M/s. ESKAPS (INDIA) PVT. LTD.

-Versus-

M/s. AL HAJ AMIR HASAN PROPERTIES PVT. LTD.

For the petitioner : Mr. Tapan Coomar Dey
Mr. V.N. Jha
Ms. Shreya Chatterjee
Mr. Sourav Ganguly

For the Opposite party : Mr. Piyush Chaturvedi, Sr. Advocate
Mr. Jitendra Patnayak

Heard On: : 09.06.2025

Judgment On: : 09.06. 2025

Hiranmay Bhattacharyya, J.

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. 50 dated March 5, 2025 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in Ejectment Suit No. 07 of 2017.

By the order impugned the learned trial judge disposed of the written objection filed by the defendant/petitioner herein to the supplementary examination in chief.

The opposite party herein filed a suit for eviction against the petitioner. The opposite party filed a petition praying for recall of PW-1 for further evidence. Such prayer stood allowed by the order dated 8th January, 2025. On 12th February, 2025 the petitioner filed a written objection to the supplementary affidavit in chief which was disposed of by the order impugned.

The learned advocate appearing for the petitioner submits that the opposite party herein filed the supplementary affidavit in chief for filling up the lacunae in evidence which is not permissible in law. In support of such contention he placed reliance upon the decisions on the Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar Vs. Sharad Chand Prabhakar Gogate reported at (2009) 4 SCC 410, Ram Rati Vs. Mange Ram (D) Through Lrs. and others in Civil Appeal No. 1684 of 2016 and M/s. Bagai Construction Thr. Its Proprietor Mr. Lalit Bagai Vs. M/s. Gupta Building Material Store in Civil Appeal No. 1787 of 2013.** He submits that the petitioner was aware of those documents right from the institution of the suit and after the closure of the evidence of the plaintiff the opposite party has sought to bring on record such documents in order to fill up the lacunae in evidence.

Per contra Mr. Chaturvedi, learned senior advocate appearing for the opposite party submits that the prayer for recalling of PW-1 was allowed in the presence of the defendant and the documents

were marked as exhibits in the presence of the defendant and P.W.-1 was also cross-examined in part by the defendant. He further submits that the Court has the power to recall the witness under Section 151 of the Code of Civil Procedure. He places reliance upon the decisions of the Hon'ble Supreme Court in the case of **K.K. Velusamy Vs. N. Palaanisamy reported at (2011) 11 SCC 275; Shubhkaran Singh Vs. Abhayraj Singh & Ors. in Special Leave to Appeal (C) Nos. 12012-12013/2025**, order passed on 5th May, 2025 and a judgement delivered by this Court on May 15, 2025 **in M/s. Jadob Electric Co. Vs. Durgapur Projects Limited & Anr. in C.O. 3986 of 2024 with C.O. 4214 of 2024.**

Heard the learned advocates for the parties and perused the materials placed.

The opposite party filed an application praying for recall of P.W.-1 for further evidence on 8th January, 2025 which stood allowed on the same date. The opposite party filed the supplementary examination in chief along with the documents and the certified copy of the extract of resolution of the board meeting of the plaintiff company dated 2nd July, 1999 was marked as exhibit 20, the certificate under Section 65B of the Indian Evidence Act dated 16th December, 2024 signed by the directors of the plaintiff company was marked as exhibit 21 and the postal track report was marked as exhibit 22. It appears from the order dated 8th January, 2025 that P.W.-1 namely, Sahid Ali was also cross-examined in part on 8th January, 2025. The order dated 8th January, 2025 is not under challenge in this civil revisional application. After accepting the said order and cross-examining the P.W.-1 on part on 8th January, 2025, the

petitioner filed a written objection to the supplementary affidavit in chief. The learned trial judge, in the order impugned, noted that the prayer for recalling of P.W.-1 was allowed on 8th January, 2025 in the presence of the learned advocate for the defendant and P.W.-1 was recalled and examined and the documents were also marked as exhibits. The learned trial judge further recorded that the P.W.-1 was also cross-examined on recall on the said date. The Hon'ble Supreme Court in Vadiraj Naggappa Vernekar (supra) reiterated the well settled proposition of law that the power to recall any witness under Order 18 Rule 17 of the Code can be exercised by the Court either on its own motion or under application filed by any one of the parties to the suit requesting the court to exercise such power and such power is discretionary as would be evident from the use of the word "may" in Order 18 Rule 17 of the Code and should be used sparingly only in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties and such power is not intended to be invoked to fill up the lacunae in evidence.

In K.K. Velusamy (supra) the Hon'ble Supreme Court held that if the party comes across some evidence which he could not lay his hands on earlier or in regard to the conduct or action of any party it comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, 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 additional evidence, oral or documentary, will assist the court to clarify the issues and will assist in rendering justice,

the court may exercise its discretion to recall the witnesses or permit the fresh evidence. Thus it is well settled that fresh evidence can be permitted if the same would assist in rendering justice.

The Hon'ble Supreme Court in a recent decision in the case of Shubhkaran Singh (supra) reiterated the proposition laid down in K.K. Velusamy (supra).

In the case on hand this Court finds that the postal track report was filed in course of the evidence of P.W.-1 and since the same was the computer generated track report it was marked as "X" for identification. It further appears that the certificate under Section 65B of the Indian Evidence Act was produced subsequently by way of recall of P.W.-1.

After going through the materials on record this Court is of the considered view that the learned trial judge was right in allowing the prayer for recall of P.W.-1 by order dated 8th January, 2025 as the same was necessary for the purpose of rendering justice. That apart the order dated 8th January, 2025 is not under challenge in the civil revisional application.

The learned trial judge by the order impugned rightly noted that no new case has been made out by the plaintiff by producing those documents and in the cross-examination the service of the notice was also not denied by the defendant at any point of time.

In M/s. Bagai Construction (supra) the application for recalling was filed after the final arguments in the suit was heard on a number of times and the judgements was reserved and only thereafter in

order to improve the case the plaintiff came forward with an application for recalling. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

In Ram Rati (supra) the Hon'ble Supreme Court also noted that during the pendency of the appeal the evidence has been closed and what remains is only the final arguments. The said decision is also distinguishable on facts and, therefore, cannot come to the aid of the petitioner.

For the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 1199 of 2025 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)