

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 1687 of 2025
Niranjan Khanra
Vs.
Sudripta Das & Anr.**

For the Petitioner : Mr. Shamit Sanyal
Ms. Sanchayita De
..... advocates

For the Opposite Party : Mr. Sanjay Mukherjee
Mr. Arghadip Das
Mr. Chiranjit Pal
...advocates

Heard on : 28.07.2025

Judgment on : 24.10.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated April 7, 2025 passed by the learned Civil Judge, Senior Division 10th Court at Alipore in Ejectment Suit no. 47 of 2024.
2. By the order impugned, the evidence of PW 1 stood closed and PW-1 was discharged and a date was fixed for evidence of the defendant's witness.
3. The opposite parties filed a suit for recovery of possession by way of eviction, damages and mesne profits against the petitioner before the learned Civil Judge, Senior Division 10th Court at Alipore which was registered as

Ejectment Suit No. 47 of 2024. At the stage of cross examination of the plaintiff witness no. 1, the petitioner filed an application under Section 24 of the Code of Civil Procedure being Misc. Case no. 148 of 2025 before the learned District Judge, 24 Parganas (South) at Alipore praying for transfer of the Ejectment Suit pending before the learned Civil Judge, Senior Division, 10th Court at Alipore to any other learned Court at Alipore.

4. The further cross examination of PW 1 was fixed on April 7, 2025. On that date the petitioner filed an adjournment petition on the ground that the application for transfer of the suit filed before the learned District Judge under Section 24 of the Code of Civil Procedure is pending.
5. The prayer for adjournment was opposed by the plaintiffs/opposite parties and the learned Trial Judge rejected the prayer for adjournment by the impugned order. The cross examination of PW 1 also stood closed and the PW-1 was discharged and a date was fixed for the evidence of the defendant's witness.
6. Being aggrieved by the order closing the cross examination of PW 1, the petitioner has approached this Court.
7. Mr. Sanyal learned advocate appearing for the petitioner contended that the petitioner filed an application for transfer of the suit which was pending before the learned District Judge. He further contended that since the application for transfer was pending the learned Trial Judge ought to have adjourned the cross examination of PW 1 so that the petitioner can move the application for transfer. He contended that the learned Trial Judge deprived the petitioner of a valuable right of cross examination by the impugned order.
8. Mr. Sanjay Mukherjee learned advocate appearing for the opposite party submitted that mere pendency of an application under Section 24 of the Code of Civil Procedure cannot operate as a stay unless the Court specifically passes an order of stay. He contended that since no order of stay was passed by the learned District Judge in the Misc. Case filed for transfer

of the suit, the learned Trial Judge was right in rejecting the prayer for adjournment and for closing the cross examination of PW 1.

9. Heard the learned advocates for the parties and perused the materials placed.
10. Record reveals that the PW 1 was cross examined on 05.04.2025 and the further cross examination of PW 1 was fixed on 07.04.2025. Alleging that some adverse opinion against the petitioner was expressed by the learned Trial Judge at the time of cross examination of PW 1 by the counsel of the petitioner on 05.04.2025, a Misc. Case no. 148 of 2025 was filed by the petitioner before the learned District Judge at Alipore praying for transfer of the Ejectment Suit no. 47 of 2024 pending before the learned Civil Judge Senior Division 10th Court at Alipore to any other learned Court at Alipore.
11. It is not in dispute that the copy of the information slip issued by the Court of learned District Judge at Alipore disclosing the pendency of the Misc. Case no. 140 of 2025 was produced by the learned advocate for the petitioner before the learned Trial Judge on April 7, 2025.
12. The learned Trial Judge however, rejected the adjournment petition on the ground that mere filing of a petition for transfer do not confer any right upon the defendant not to proceed further with the instant suit.
13. After going through the impugned order it appears to this Court that the learned Trial Judge was swayed by the observation made by the Hon'ble Division Bench in the case of **Bijan Behari Manna vs. Sudhir Chandra Maity and ors.** reported at **(2004) 1 CHN 19**.
14. It is not in dispute that the fact of pendency of an application under Section 24 of the Code of Civil Procedure before the learned District Judge was brought to the notice of the learned Trial Judge.
15. The Hon'ble Supreme Court in **R. Aurnagiri v. C. Ranganathan**, reported at **1987 (Supp) SCC 48** in a more or less identical fact situation observed that the learned Judge should not have proceeded with the matter since the

transfer application was pending and he was apprised of it. It was further observed that the learned trial Judge should not have been in a hurry under such circumstances. It was also held that the learned judge was not justified in refusing the request made for a short adjournment.

16. It is not in dispute that the petitioner cross-examined the PW1 on 05.04.2025 and immediately thereafter filed a Misc. case for transfer and prayed for an adjournment on 07.04.2025 on the ground of pendency of the application for transfer.
17. By applying the principles laid down by the Hon'ble Supreme Court in **Aurnagari** (supra) this Court holds that the learned Trial Judge was not justified in refusing the request made by the petitioner for adjournment after the learned Trial Judge was apprised of the fact that the application for transfer of the suit is pending before the learned District Judge. The learned trial judge ought to have granted a short adjournment to enable the petitioner to move the application for transfer. That apart, cross-examination of a witness being a valuable right, this Court is of the considered view that the learned trial judge ought to have afforded an opportunity to the petitioner to cross examine the PW1 instead of closing his cross-examination.
18. For all the reasons as aforesaid this Court is inclined to interfere with the impugned order.
19. In **Bijan Bihari Manna** (supra), in a Misc. case arising out of an application under Section 24 of the Code of Civil Procedure the learned District Judge passed an order of status quo till the hearing of the application for injunction by the learned Trial Judge and fixed a date for hearing of such application. On such facts the Hon'ble Division Bench held that there is no scope for granting injunction in a Misc. case under Section 24 of the Code of Civil Procedure and that too on an application for adjournment until the suit is transferred to its own file. The said decision being distinguishable on facts cannot come to the aid of the petitioner.

20. At this stage it would be relevant to point out that the Misc. Case no. 148 of 2025 was dismissed by the learned District Judge by an Order dated May 17, 2025. The said order dated May 17, 2025 was challenged by the petitioner in CO 2194 of 2024 which has already been dismissed by this Court. Thus there is no impediment on the part of the learned trial judge from proceeding with the hearing of the ejectment suit.
21. Accordingly, the order dated April 07, 2025 passed by the learned Civil Judge, Senior Division, 10th Court at Alipore in Ejectment Suit no. 47 of 2024 is set aside. The learned Trial Judge is directed to fix a date for further cross examination of PW 1 by the petitioner and to make an endeavour to conclude the cross-examination of PW-1 at the earliest. The learned Trial Judge is further requested to dispose of the Ejectment Suit no. 47 of 2024 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.
22. CO No. 1687 of 2025 stands allowed with the aforesaid observations and directions. There shall be, however, no order as to costs.
23. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)