

D/L- 76
19/06/2025
Ct. No.-6
Aritra

C.O. 1904 of 2025

**Lakhandar Yadav @ Ram Binay Yadav
Vs.
M/s. Abhishek Marco Pvt. Ltd. & Ors.**

Mr. Sounak Mandal

...for the petitioner

Mr. Uday Sankar Chattopadhyay

Mr. Asis Dutta

....for the opposite party

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.47 dated November 15, 2022 and order being No.69 dated March 20, 2025, both passed by the learned Civil Judge (Jr. Div.), 2nd Court, Alipore, District-South 24-Parganas in Title Suit No.349 of 2013.

By the order dated November 15, 2022 the evidence of plaintiff witness stood closed. Thereafter the petitioner filed an application praying for recalling of the P.W.1 for cross-examination. Such application stood rejected by the order dated March 20, 2025.

Mr. Mandal, learned advocate appearing for the petitioner submits that since the learned advocate of the petitioner was not physically fit to cross-examine the plaintiff on the particular day an adjournment was sought for and a prayer was made for fixing another day for cross-examination. Such prayer for adjournment

was rejected and the evidence of the plaintiff witness stood closed. He submits that the petitioner should not be made to suffer for the latches on the part of the learned advocate.

Mr. Chattopadhyay, learned advocate appearing for the opposite party submits that the examination-in-chief of P.W.1 was completed on January 17, 2020 and P.W.1 was cross-examined in part and thereafter the cross-examination was deferred on the prayer of the learned advocate for the defendant. He submits that on the prayer of the advocate for the defendant the cross-examination was adjourned on several occasions. He submits that the defendant is trying to delay the hearing of the suit. He submits that the learned trial judge was right in closing the evidence of the P.W.1. In support of such contention Mr. Chattopadhyay placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Bagai Construction vs. Gupta Building Material Store***, reported at **(2013) 14 SCC 1**.

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

The Hon'ble Supreme Court in the case of ***K.K. Velusamy vs. N. Palanisamy***, reported at **(2011) 11 SCC 275**, after taking note of the provisions of Section 151 of the Code of Civil Procedure held that in the interests of justice and to prevent abuse of the process of the court, the trial court is free to consider whether it

was necessary to reopen the evidence and if so, in what manner and to what extent. It was further held that the power under Section 151 of the Code or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for asking and if it is so used it will defeat the very purpose of various amendments to the Code to expedite trials. The Hon'ble Supreme Court further held that where the application is found to be *bona fide* and where additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence, but if it does so, it should ensure that the process does not become a protracting tactic.

In the case on hand the right of the defendant to cross-examine the P.W.1 was taken away. Cross-examination being a valuable right, this Court is inclined to allow the prayer of the petitioner for recalling of P.W.1 for cross-examination. However, the petitioner should be put to terms for getting such opportunity.

The learned advocate appearing for the petitioner submits that in the meantime by a subsequent order the evidence of the defendant's witness also stood closed. This Court is of the considered view that unless the

petitioner is allowed to adduce evidence, petitioner will suffer irreparable loss and injury.

To the mind of this Court, the petitioner should be afforded an opportunity to cross-examine the P.W.1 and to adduce evidence.

In ***Bagai Construction (supra)***, the application for recall of witness was filed after the final arguments were heard on a number of times and the judgment was reserved. The said decision being distinguishable on facts cannot come to the aid of the opposite party.

The prayer of the petitioner for recalling of P.W.1 for cross-examination stands allowed subject to payment of cost of Rs.5000/- to the opposite party on or before June 23, 2025. If the aforesaid amount is paid within the time limit indicated hereinbefore, the petitioner shall be permitted to cross-examine the P.W.1 on June 23, 2025 and the learned trial is requested to ensure that the cross-examination of P.W.1 is completed as expeditiously as possible. The P.W.1 is also directed to remain present on June 23, 2025 to face cross-examination.

The learned trial judge is directed to proceed thereafter in accordance with law.

The orders dated November 15, 2022, March 20, 2025 and all subsequent orders thereto are set aside.

With above observations CO 1904 of 2025 stands allowed.

It is however made clear that in the event the petitioner fails to make the aforesaid payment within the time limit indicated hereinbefore, this order shall stand automatically recalled without any further reference to this Court.

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.)