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07.07.2025
Court No.6
BP

C.O. 2127 of 2025

M/s. ESKAPS (India) Pvt. Ltd.
-versus-
M/s. Al Haj Amir Hasan Properties Pvt. Ltd.

Mr. Tapan Coomar Dey
Ms. Shreya Chatterjee
... for the petitioner

Mr. Pijush Chaturvedi, Sr. Advocate
Mr. Jitendra Patnaik
..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. 64 dated 23rd April, 2025 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in Ejectment Suit No. 08 of 2017.

By the order impugned the application filed by the opposite party herein praying for recall of P.W.-1 stood allowed.

The learned advocate appearing for the petitioner submits that the opposite party sought to fill up the lacuna in evidence by recalling P.W.-1 which is not permissible. In support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of Vadiraj Naggappa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate reported at 2009(4) SCC 410. He further submits that the application for recalling was filed after the cross-examination of P.W.-1 was closed. He submits that at such a belated stage recall

of P.W.-1 should not have been allowed. In support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of M/s. Bagai Construction Vs. M/s. Gupta Building Material Store reported at AIR 2013 (SC) 1849. He further refers to a decision of the Hon'ble Supreme Court in the case of Shubhkaran Singh Vs. Abhayraj Singh & Ors. reported at MANU/SC/0636/2025 in Special Leave to Appeal (C) Nos. 12012-12013/2025.

Per contra Mr. Chaturvedi, learned senior advocate appearing for the opposite party places reliance upon a decision of the Hon'ble Supreme Court in the case of K.K. Velusamy Vs. N. Palanisamy reported at (2011) 11 SCC 275 in support of his contention that an application for recalling can be allowed if the same is necessary for doing complete justice between the parties. He further places reliance upon a decision passed by this Court on 9th June, 2025 in C.O. 1199 of 2025 between the self same parties.

The opposite party herein filed a suit for eviction against the petitioner. After closure of the cross-examination of P.W.-1 the opposite party filed an application for recall of P.W.-1 along with a supplementary affidavit in chief. The opposite party prayed for leave to produce the certified copy of the extract of the resolution of the plaintiff company passed in the Board meeting dated 2nd July, 1999 and for marking the same as an exhibit.

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 on an 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. It was further held that if a 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 the recent decision in the case of Shubhkaran Singh (supra) reiterated the proposition of law laid down in K.K. Velusamy (supra) in paragraph 12 of the said decision.

The opposite party sought to tender the certified copy of the original minutes of the proceedings of the meeting of the Board of Directors held on 2nd July, 1999 signed and certified by the present directors.

After going through the materials on record this Court finds that the said document would assist the Court in rendering justice between the parties. The learned trial judge held that if the document in question is allowed to be admitted into evidence it will only carry better clarification of facts regarding the authority of persons who file the suit and will not result in covering up the lacunae in evidence.

In M/s. Bagai Construction (supra) the application for recalling was filed after the final argument in the suit was heard on a number of times and the judgement was reserved and only thereafter in order to improve the case the plaintiff came forward with an application for recalling. As rightly argued by Mr. Chaturvedi, learned senior advocate appearing for the opposite party the said decision is distinguishable on facts and cannot be applied to the case on hand. This Court had the occasion to consider the other decisions cited by the learned advocate for the petitioner in the case of Vadiraj Naggappa Vernekar

(supra) while passing the order on 9th June, 2025 in C.O. 1199 of 2025 in the case of M/s. ESKAPS (India) Pvt. Ltd. Vs. M/s. Al Haj Amir Hasan Properties Pvt. Ltd. wherein it was held that fresh evidence can be permitted if the same would assist in rendering justice.

The learned trial judge expressed an opinion that the documents sought to be tendered will only carry better clarification and will not result in covering the lacunae in evidence. This Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 2127 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.)