

22. 23.06.2025
Court No.6
(Tanmoy)

CO/2148/2025

**SRI ASHOK KUMAR SINHA
VS
MD. KHURSHID ALAM AND ANR.**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. Rudranil Das
Mr. Soumava Santra

... for the petitioner.

Mr. Wasim Ahmed
Mr. Md. Saifur Rahaman

...for the opposite party no.1.

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the orders dated 10th of December, 2024 and 5th of June, 2025, both passed by the learned Civil Judge (Senior Division), 3rd Court at Howrah, in Title Suit No.221 of 2021.

2. By the order dated 10th of December, 2024, the evidence of the plaintiff stood closed and a date was fixed for argument on the point of acceptance of the Partition Commissioner's report. The petitioner/plaintiff filed an application under Section 151 of the Civil Procedure Code, 1908, for modification of the order dated 10th of December, 2024, which stood rejected by the order dated 5th of June, 2025.

3. Mr. Mukherjee, learned Advocate appearing for the petitioner, submits that the petitioner was not

aware that the petitioner was required to adduce his evidence at 3:00 p.m. on 10th of December, 2024. On such ground, the application under Section 151 of the Civil Procedure Code, 1908 was filed. The learned Trial Judge rejected the application under Section 151 of the Civil Procedure Code, 1908, on the ground that the plaintiff has not challenged the order dated December 10, 2024 before the higher forum.

4. The Hon'ble Division Bench, by an order dated 6th of October, 2023, passed in FA 39 of 2023 (*Ashok Kumar Sinha v. Md. Khurshid Alam & Ors.*), disposed of the appeal by remitting the matter to the Trial Court for deciding the matter afresh as the final decree was passed *ex parte*. Thereafter, the petitioner filed an application before the learned Trial Judge praying for an opportunity to adduce evidence in furtherance of his objection to the Partition Commissioner's report which stood rejected by the order dated March 7, 2024. The petitioner challenged the said order along with the subsequent orders by filing CO/960/2024, which was disposed of by order dated 1st of April 2024. A co-ordinate Bench, while disposing of CO/960/2024, made the following observations:-

"This Court cannot pre-judge such contention of the petitioner. However, when specific objection with regard to Sibbu's presence and authorization had been raised in the objection to the commissioner's report and the Hon'ble Division Bench had permitted the petitioner to

agitate his objection and had further directed the learned trial judge to hear out the objection, for the ends of justice, the petitioner must be allowed to recall himself, adduce evidence and produce Sibü as a witness with regard to such issue. The evidence shall be restricted to the contention that Sibü was not authorized by the plaintiff to attend the commission and that the notice prior to the commission work had not been served. The defendant will be entitled to cross-examine the plaintiff and Sibü. The evidence shall be concluded within two days, including the chief and the cross. Such dates shall be fixed by the learned court and the learned court shall fix such dates only upon being satisfied that a cost of Rs.15,000/- was been paid to the defendant by the plaintiff, within two weeks from date. The learned court shall conclude the suit by passing the final decree, within two months from completion of the evidence. No unnecessary adjournments shall be granted to either of the party and the dates fixed by the learned court shall be final.”

5. The co-ordinate Bench, after noticing the judgment of the Hon’ble Division Bench, was of the view that for the ends of justice the petitioner must be allowed to recall himself, adduce evidence and produce Sibü as witness with regard to the specific objection as to Sibü’s presence and authorization which had been raised in the objection to the Commissioner’s report. The co-ordinate Bench further specified in the said order that the evidence shall be restricted to the contention that Sibü was not authorized by the plaintiff to assign the Commission and that the notice prior to the Commission work had not been served.

6. Learned Trial Judge, in the order dated 5th of June, 2025, observed that in spite of specific direction of the Hon'ble High Court at Calcutta, the examination-in-chief dated July 25, 2024, filed by the plaintiff appears to be in total contravention of the directions of the Hon'ble High Court.

7. A copy of the examination-in-chief on affidavit filed by the plaintiff was produced before this Court. On a bare perusal of the same, this Court is also of the view that the examination-in-chief on affidavit filed by Sri Ashok Kumar Sinha, as the plaintiff in the suit, was in total contravention of the order passed by the co-ordinate Bench in CO/960/2024 as extraneous matters beyond the scope of the said order were also stated in the said affidavit.

8. Faced with such situation, Mr. Mukherjee, learned Advocate appearing for the petitioner, submits that the petitioner shall restrict his evidence within the limited scope as indicated by the co-ordinate Bench in CO/960/2024. Such submission is placed on record.

9. Since certain extraneous matters were also stated in the examination-in-chief on affidavit, this Court is of the considered view that the scope of the evidence cannot be enlarged from that as directed by the co-ordinate Bench in CO/960/2024 and the affidavit-in-chief shall be considered in the manner

as indicated in the order dated 01.04.2024 in CO/960/2024. However, considering the fact that the petitioner's evidence was closed and as the petitioner stated that he was not aware that on 10th of December, 2024, at 3:00 p.m., the petitioner was supposed to give evidence, this Court is of the considered view that the interest of justice would be sub-served if the petitioner is permitted to adduce evidence on the next dated fixed in the suit in the manner as indicated hereinbefore.

10. Mr. Mukherjee, learned Advocate appearing for the petitioner, on instruction, submits that 23rd of July, 2025 has been fixed before the learned Trial Judge, awaiting orders from this Court in this civil revisional application.

11. The reasoning assigned by the learned Trial Judge in the order dated 5th of June, 2025 that the petitioner is precluded from filing the application on the ground that the petitioner has not challenged the order dated 10th of December 2024, before the higher forum cannot be supported. The petitioner had the option either to challenge the same before the higher forum or to approach the learned Trial Judge for recalling of the said order stating the grounds for which the petitioner could not adduce evidence on the previous date. Since the petitioner had accepted one of the two alternatives, the learned Trial Judge

was not right in rejecting the said application on such ground.

12. The learned Trial Judge shall allow the petitioner to give evidence on the next date i.e. July 23, 2025, provided the petitioner/plaintiff and Sibbu are present before the learned Trial Judge on July 23, 2025 in the light of the observations made hereinbefore.

13. The learned Civil Judge (Senior Division) 3rd Court at Howrah, is requested to make an endeavour to see that the Title Suit No. 221 of 2021 is disposed of as expeditiously as possible but preferably by the end of the month of July, 2025, without granting any unnecessary adjournment to either of the parties.

14. With the above observations and directions the civil revisional application being CO/2148/2025 stands disposed of.

15. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(HIRANMAY BHATTACHARYYA, J.)