

D/L- 36
23/07/2025
Ct. No.-6
Aritra

C.O. 2638 of 2025

**Nand Kishore Agarwal @ Munna Agarwal
Vs.
Nisha Singh**

Mr. Md. Aqib Badr
Mr. Shayak Chakraborty
Mr. Sobhan Gani
Mr. Shakti Shivam

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated June 12, 2025 passed by the learned Civil Judge (Sr. Div.), 1st Court at Alipore in Money Suit No.76 of 2019.

By the order impugned the application for recalling of P.W.1 stood rejected.

The learned advocate appearing for the petitioner submits that the P.W.1 is to be recalled for the purpose of proving the sale deeds which are necessary for the purpose of effective adjudication of the dispute involved in the suit. He further submits that the delay cannot be the sole ground for rejecting the application under Section 151 of the Code of Civil Procedure praying for recalling of the witness.

The petitioner herein filed a suit for defamation claiming a decree for Rs.99,60,000/- in his favour on account of damage caused to the reputation of the petitioner and thereby directing the defendant/opposite

party herein to pay the said amount. The cause of action for filing the said suit is that the opposite party herein filed an application under Section 144(2) of the Code of Criminal Procedure before the learned Executive Magistrate, 2nd Court at Alipore in M.P. Case No.4972 of 2018 wherein the defendant not only made and pressed some false, frivolous statements but also made some imputed statements, with the *mala fide* intention to lower the dignity of the petitioner/plaintiff before the public at large and by way of such imputed statements the defendant/opposite party has maligned the petitioner/plaintiff and assassinated his character before the public at large.

It is not in dispute that the evidence of the parties have been closed and after conclusion of evidence of the defendants the petitioner filed an application captioned as one under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure praying for recalling of P.W.1.

After going through the said application, this Court finds that the petitioner sought to tender the sale deeds in respect of the suit property purchased by him prior to the alleged purchase of the same by the defendant. The list of the sale deeds sought to be tendered by the petitioner has been mentioned in the schedule of the said application and the questions that the petitioner sought to put to the P.W.1 upon recall has also been mentioned in the said application.

After going through the list of documents, this Court finds that the petitioner sought to tender certain deeds of the year 2018 and the questions with the petitioner sought to put to the P.W.1 upon recall are related to such sale deeds. As observed hereinbefore the suit is for defamation and the cause of action for such suit arises out of certain statements made in an application under Section 144 (2) of the Criminal Procedure Code. Thus, the sale deeds and questions related thereto are not relevant for the purpose of rendering justice in the case on hand.

It is not in dispute that the Court may in exercise of its inherent powers under Section 151 of the Code can permit the production of 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 in the case of **K.K. Velusamy vs. N. Palanisamy**, reported at **(2011) 11 SCC 279**, held that where the additional evidence, oral or documentary, will assist the Court to clarify the issues and will assist in rendering justice, the Court can exercise its discretion to recall the witnesses or permit the fresh evidence.

Considering the nature of the suit and the purpose for which the petitioner sought to recall the P.W.1, this Court is of the considered view that the additional evidence, oral and documentary, which the petitioner

seeks to introduce upon recall of P.W.1 cannot be said to assist the Court to clarify the issues or assist the Court in rendering justice in a suit which is a suit for defamation.

That apart, the application for recall was filed at a belated stage i.e. after the conclusion of evidence of the defendant.

For all the reasons as aforesaid, this Court is not inclined to interfere with the ultimate conclusion arrived at by the learned trial judge.

With the above observations, CO 2368 of 2025 stands dismissed.

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.)