

10.09.2025
Item No.03
Ct. No. 446
RP

CO 2906 of 2025
Palash Mondal vs. Pratap Das & Ors.

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhirup Halder
Mr. Anirban Saha Roy
Ms. Bipasha Bhattacharya
....For Petitioner

Mr. Debjit Mukherjee
Mr. Kaustav Bhattacharya
Ms. Priyanka Jana
Ms. Shreejita Sen
....For Opposite Party No.1 and 2

1. Affidavit-of-service filed in Court today be kept on record.
2. This revisional application under Article 227 of the Constitution of India is filed against the order no.21 dated 21st July, 2025 passed by the Learned Civil Judge (Junior Division), 4th Court at Howrah in Title Suit No.280 of 2010 whereby the application filed by the petitioner under Section 151 of the Code of Civil Procedure was rejected.
3. It is submitted by the learned advocate for the petitioner that the suit was filed by the opposite parties for declaration of title and permanent injunction against the present petitioner and the proforma opposite party nos.3 and 4 herein. The opposite parties filed an application under Order 1

Rule 10(2) read with Section 151 of the Code of Civil Procedure in connection with the said suit with a prayer to implead the present petitioner as defendant no.3.

4. By virtue of the order dated 29th August, 2017 the said prayer was allowed and the petitioner was impleaded as defendant no.3. The petitioner thereafter filed written statement and counter claim thereby denying material allegations contained in the plaint filed by the present opposite parties. He also filed an application in order to prove his own case to issue witness summon upon one Sunil Kumar Chatterjee on 28th July, 2023.
5. The said prayer was allowed by the learned Court and summon was sent through registered post, which was returned with the postal endorsement "refused". The said witness did not appear before the court despite having knowledge about the case and, accordingly, an application under Section 32 of the Code of Civil Procedure was filed praying for issuance of warrant of arrest against the said witness. The said prayer was also allowed vide order dated 17.1.25 and issued WWA.

6. Subsequently, prayer was made by the officer of the jurisdictional Mandanayakankhali Police Station, Bangaluru for some time and such prayer was allowed fixing the date for WWA and DW as a last chance in default fixed for argument. Despite that the said witness did not turn up. Then the petitioner took out an application for passing necessary orders in the context of the order dated 17th January, 2025 for a direction to sent one police personnel to contact with the Officer-in-Charge of Mandanayakankhali Police Station and to receive on remand the witness Sunil Kumar Chatterjee to produce him before the learned Court.
7. Learned advocate appearing for the opposite parties raised vehement objection regarding direction to be given to the learned Court for issuance of warrant of arrest. However he did not challenge any of the above orders passed by the learned court issuing warrant of arrest against the witness.
8. Having heard the submission of the learned advocate for the parties and perused the materials on record. It is seen that the witness warrant was issued on earlier occasion against the said witness

as despite receiving notice he refused to turn up before the Court. Therefore, practically the adverse order was passed against the witness earlier and in order to carry out such order it is necessary that the subsequent order be passed so that the witness can be produced before the Court without any further delay. In view of the above, this Court is also of the view that the learned Court while refusing the prayer under Section 151 of the Code of Civil Procedure did not assign any reason as to why such prayer was not considered when on previous occasion order was passed for issuance of warrant of arrest.

9. In view of the above facts and circumstances of the case, this Court finds that the application is required to be heard afresh by the learned court and after hearing both the learned advocates representing the parties to pass a reasoned order with proper direction in view of the previous order passed on 17th January, 2025 and subsequently on 5th June, 2025.

10. The learned Court is further directed to hear out such application afresh within a period of fortnight from the date of uploading of this order without

granting any unnecessary adjournment to either of the parties and without being influenced by any of the above observation made by this court.

11. In the result, this revisional application stands allowed and accordingly the order passed by the learned court on 21.7.25 is hereby set aside.

12. Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(Chaitali Chatterjee (Das), J.)