

Court No. 6  
(265719)

**18.08.2025**  
(AD 9)  
(S. Banerjee)

CO 2913 of 2025

The Victor Oil Co. Pvt. Ltd.  
Vs.  
Empress Shipping Services Pvt. Ltd. & Anr.

Ms. Shohini Chakraborty  
Mr. Sayantan Bose  
Ms. Priyanka Gope

...for the petitioner

Ms. Avirup Mondal  
Mr. Souvik Sen  
Mr. Debdipta Sen

...for the opposite party

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. Division), 8<sup>th</sup> Court at Alipore in Title Suit No. 52 of 1998. By the order impugned the application filed by the petitioner under Section 151 of the Civil Procedure Code praying for recalling of PW-1 to tender the Board Resolution dated January 8, 2003, stood rejected.

Ms. Chakraborty, learned advocate appearing for the petitioner submits that in course of cross-examination, the PW-1 specifically submitted that he can file the document which shows that he has right to proceed with the case. However, through

inadvertence such document was not tendered in evidence. She further submits that such document is necessary for the purpose of effective adjudication of the disputes involved between the parties.

Learned advocate appearing for the opposite parties submits that the petitioner tried to fill up the lacunae in evidence by filing an application for recalling of PW-1 at the stage of further argument. He places reliance upon a decision of the Hon'ble Supreme Court in the case of *Bagai Construction, through its proprietor Lalit Bagai –Vs.- Gupta Building Material Store*, reported in (2013) 14 SCC 1 in support of his contention that the argument should be a continuous process and if the same is not followed, the purpose of amending various provisions of the Civil Procedure Code will get defeated. He further submits that the learned trial judge after considering the fact that the petitioner failed and neglected to produce the Board Resolution dated January 8, 2003 in spite of getting several opportunities, was right in disallowing the prayer for recall of PW-1. He further submits that only under exceptional circumstances the prayer for recall of a witness can be allowed and in support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of *M. M. Amonkar & Ors. –Vs.- S. A Johari*, reported in (1984) 2 SCC 354.

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

The petitioner filed a suit for eviction and for recovery of khas possession against the opposite party no. 1 herein. The petitioner is a limited company. The Secretary of the plaintiff company adduced evidence as PW-1. In course of his cross-examination the PW-1 stated that he can file the document to show that he has a right to proceed with the case. The petitioner herein filed an application praying for recalling of PW-1 to produce the Board Resolution dated January 8, 2003. Such application was filed on June 10, 2025. It is not in dispute that the application was filed at the stage of further argument. However, considering the fact that the suit was filed by a private limited company and the Board Resolution dated January 8, 2003 states that the company has authorized Sri Mahabir Prasad Gupta, Secretary of the Company, to sign and file documents and to depose on behalf of the company, this Court holds that such document is a vital document which is necessary for the purpose of rendering justice.

The Hon'ble Supreme Court in *K. K. Velusamy – Vs.- N. Palanisamy*, reported in (2011) 11 SCC 275 held that if the court is satisfied that non-production earlier was for valid and sufficient reason and the

same would be necessary for the purpose of rendering justice, a witness can be recalled even at a belated stage.

As observed hereinbefore that the Board Resolution dated January 8, 2003 is necessary for the purpose of rendering justice. This court is, thus inclined to allow the prayer of the petitioner to recall the PW-1 only for the purpose of tendering the Board Resolution dated January 8, 2003 and the opposite parties shall get an opportunity to cross-examine the PW-1 on such document.

In *Bagai Construction (supra)* after the final arguments were heard and the judgment was reserved, the application for recalling of the witness was filed in order to improve their case. The said decision being distinguishable on facts, cannot come to the aid of the opposite parties.

There is no quarrel to the proposition of law that the court's power to recall and examine the witness at any stage of a suit under Order 18 Rule 17 of the Civil Procedure Code has to be exercised in exceptional circumstances. The case on hand does not fall within the scope of Order 18 Rule 17 of the Civil Procedure Code but the same is under the provisions of Section 151 of the Civil Procedure Code as it is at the

instance of a party seeking to lead further evidence by way of recall of the witness.

It is now well-settled that even after deletion of the provisions under Order 18 Rule 17A of the Civil Procedure Code, the court in exercise of its powers under Section 151 of the Civil Procedure Code can allow the party to lead further evidence by recalling a witness, if the same is necessary for the purpose of rendering justice.

For the reasons as aforesaid, the impugned order is set aside. The prayer for recall of PW-1 is allowed. The learned trial judge is directed to fix a date for further evidence of PW-1 on recall only for the limited purpose as indicated hereinbefore and to afford an opportunity to the opposite parties to cross-examine the PW-1.

The learned trial judge is requested to make an endeavour to dispose of the suit as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

With the above observations and directions CO 2913 of 2025 stands allowed.

**(Hiranmay Bhattacharyya, J.)**