

Item No. 2
15.12.2025
Court. No. 6
GB

C.O. 3042 of 2025

Smt. Chhabi Bhattacharjee
Vs.
Smt. Kakali Mukherjee & Ors.

Mr. Siva Prasad Ghose

...for the Petitioner.

Mr. Sovan Mukherjee

...for the Opposite Parties.

1. This revisional application arises out of an order dated July 22, 2025, passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah in Title Suit No.707 of 2016.
2. By the order impugned, the learned court allowed an application under Order 18 Rule 17 of the Code of Civil Procedure upon payment of cost of Rs.2,000/-. Although, the learned court was of the view that the document sought to be produced could have been exhibited earlier as the same was within the knowledge of the P.W.1, Gopa Das, before commencement of trial, the same was sought to be produced only when in the cross-examination the tenant had uttered a statement that Gopa Das and Kakali Mukherjee were living in the said premises, but in a different mess. The learned court was of the view that changed circumstances necessitated marking of the Gas Consumer Book as an exhibit.
3. Mr. Ghose, learned advocate for the petitioner/tenant submits that the application under Order 18 Rule 17 of the Code of Civil Procedure should not have been

allowed after the evidence was closed and arguments had been advanced. The purpose of recalling a witness and adducing further evidence at the stage of arguments could not be to fill up any lacuna in the plaint case. Such power of the court should be exercised with utmost caution and in very exceptional cases. The marking of the Gas Consumer Book as an exhibit was completely unnecessary to the suit for eviction of the tenant, on the ground of reasonable requirement. Order 18 Rule 17 of the Code of Civil Procedure could not be resorted to by Smt. Gopa Das.

4. Learned advocate for the plaintiffs submits that the court can allow an application under Order 18 Rule 17 of the Code of Civil Procedure by exercising discretion vested upon it by law, at any stage of the suit. Hence, the discretion was rightly exercised by the court, after the evidence of the parties had concluded. Reliance has been placed on the decision of **Suresh Kumar versus Baldev Raj** reported in **AIR 1984 Delhi 439**.
5. Mr. Ghose relies on the decision of the Hon'ble Apex Court in the matter of **Shubhkaran Singh versus Abhayraj Singh & Ors.** reported in **2025(3) Indian Civil Cases 471 (S.C)** in support of the contention that a witness cannot be recalled at the instance of a party for the purpose of examining, cross-examining or re-examining. Adducing further

evidence, by production of a document which was missed out all through the trial, could not be allowed.

6. The power of recall permitted only the court to put questions to the witness on recall and even cross-examination was not ordinarily permitted on the answers given to such questions without the leave of the court.
7. An opportunity to a party to recall a witness for examination, cross-examination or re-examination can be granted by the court in exercise of inherent jurisdiction under Section 151 of the Code. The power is to be sparingly used and only in appropriate cases. Merely because the recall or re-examination will not cause any prejudice to the defendant, is not a suitable ground for the court to exercise such discretion.
8. The plaintiffs filed the suit for eviction on the ground of reasonable requirement. The plaintiffs had narrated in detail that they were jointly possessing the property and as such, the family of Gopa Das was also living in the premises and they required additional rooms. The defendant had admitted in the cross-examination that Gopa Das was living in the suit premises, in a separate mess.
9. Under such circumstances, the Gas Consumer Book of Gopa does not seem to be a necessary document for proper adjudication of the dispute between the parties. The plaintiffs have to prove their case of reasonable requirement and in doing so, the plaintiffs

can take advantage of whatever had transpired during the evidence.

10. Under such circumstances, the learned court although noted that the document was within the knowledge and custody of the plaintiff no.4 and could have been filed earlier, allowed production of the same and marking of the same as an exhibit after argument had commenced. This was not proper exercise of inherent power. The court has not recorded why the situation was so exceptional that, the document should be allowed to be marked as an exhibit and why the same was necessary and relevant for adjudication of the suit.

11. In the matter of ***Shubhkaran Singh vs Abhayraj Singh and Ors.*** reported in **2025 INSC 628**, the Hon'ble Apex Court held as follows:-

“11. This Court in the case of Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, reported at (2009) 4 SCC 410 more particularly para 28 held as under: “28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.” (Emphasis supplied)

12. In the case of K.K. Velusamy v. N. Palanisamy reported at (2011) 11 SCC 275, this Court discussed the power of the Court under Order 18 Rule 17 of CPC. It was held that this power is only for clarification i.e. to enable Court to clarify any issue or doubt, it may have in regard to evidence led by parties by recalling any witness so that the Court itself can put questions to such witness and elicit

answers. The relevant paras 9, 10 and 19 read as under:

“9. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or crossexamination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or crossexamination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. xxx xxx xxx

19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the

delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

12. Under such circumstances, the order impugned is set aside. The learned court shall not take note of the Gas Consumer Book for the purpose of adjudication of the suit. This order shall be brought to the notice of the learned court who has fixed the date for delivery of judgment on December 16, 2025.
13. Accordingly, the revisional application is disposed of.
14. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)