

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 3173 of 2025

Mrs. Kusum Sharma
Vs.
Debanand Mishra & Ors.

For the Petitioner	: Mr. Arup Krishna Das Mr. Rajarshi Ghosh Mr. Utsav Ghatak
For the opposite party	: Mr. Saurabh Guhathakurata Mr. Abhratanu Sarkar Mr. Partho Proteem Das
Heard on	: 28/08/2025
Judgment on	: 28/08/2025

Hiranmay Bhattacharyya , J. :

1. This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against the orders being Nos.118 and 122 dated July 5, 2025 and August 12, 2025 respectively both passed by the learned Civil Judge (Jr. Div.), 1st Court at Asansol in Title Suit No.38 of 2009.

2. By the order being No.118 dated July 5, 2025 the application under Section 151 of the Code of Civil Procedure filed by the petitioner herein praying for permission to file certain documents for the purpose of marking the same as exhibit stood rejected. By the order No.122 dated August 12, 2025 the application filed by the petitioner under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure praying for recalling of P.W.1 to put certain questions to him also stood rejected.

3. Mr. Das, learned advocate appearing for the petitioner submits that one Sitaram Mishra (since deceased) was a tenant in respect of the property in question under the original plaintiff and upon his death his son, namely, Awadesh Mishra became the tenant. The said Awadesh Mishra subsequently surrendered the tenancy and left Asansol. He submits that the defendant/opposite party herein was allowed to carry on business in the suit property and the instant suit has been filed for eviction of the opposite party upon revocation of licence. He submits that upon the death of the original plaintiff, the petitioners, who are the substituted plaintiffs found certain documents to show that the tenancy was surrendered by Awadesh Mishra and for such purpose the petitioner filed an application praying for recalling of P.W.1 which was rejected by the orders impugned.

4. Mr. Das, learned advocate appearing for the petitioner submits that the prayer for recalling of a witness can be permitted even at a belated stage and in support of such contention he places reliance upon a decision of the Hon'ble Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy**, reported at **(2011) 11 SCC 275**.

5. The learned advocate appearing for the opposite party submits that the petitioners were all along in possession of such documents and for reasons best known to the petitioner the copies of such documents were neither disclosed in the list of documents to be stated in the plaint and also at the stage of evidence. He further submits that the evidence of the parties have already been concluded and when the suit was fixed for argument, the petitioner filed the present application only to delay the instant suit.

6. The learned advocate appearing for the opposite party places reliance upon a decision of the Hon'ble Supreme Court in the case of **Bagai Construction vs. Gupta Building Material Store**, reported at **(2013) 14 SCC 1** in support of his contention that a party cannot be permitted to file application for recall of a witness in order to fill up the lacuna in evidence at the stage of argument.

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

8. The petitioner filed a suit for eviction upon revocation of licence. It has been specifically stated in the plaint that one Sitaram Mishra (since deceased) was previously a tenant under the plaintiff in respect of the suit property and after his death his son, namely, Awadesh Mishra became the tenant under the plaintiff who voluntarily surrendered the tenancy and left Asansol 5/6 years back. It has been further stated in the plaint that the defendant was permitted to run a sweet meat shop in the suit premises. The petitioner requested the opposite party to quit and vacate the suit premises

and deliver the possession but the opposite party failed and neglected to deliver possession in favour of the petitioner, the instant suit has been filed.

9. The petitioner initially filed an application under Section 151 of the Code of Civil Procedure praying for an order allowing the petitioner to file the same documents and to mark the same as exhibit. Such application was rightly rejected by the learned trial judge by an order dated July 5, 2025 as the documents which the petitioner sought to produce are neither public document and without the same being tendered in accordance with law the same would not have been marked as exhibit straight away.

10. However, the petitioner subsequently filed an application styled as one under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure. In the said application the petitioner prayed for recall of Pradip Sharma (P.W.1) for the purpose of putting certain questions to P.W.1. The questions which the petitioner sought to ask to the P.W.1 on recall has been specifically mentioned in sub-paragraph (a) to (g) of paragraph 5 of the said application.

11. It is not in dispute that the original plaintiff died on January 2, 2019 and prior to his death the evidence of P.W.1 was concluded on April 6, 2016.

12. It has been specifically stated in the application under Order 18 Rule 17 of the Code of Civil Procedure that since the earlier application under Section 151 of the Code of the Civil Procedure was rejected, the present application has been filed. In the application under Section 151 of the Code of Civil Procedure it was stated that the documents which the

petitioner sought to be tendered through P.W.1 upon his recall could be traced out after the death of the original plaintiff and the same are necessary for the purpose of the instant suit.

13. The Hon'ble Supreme Court in **K.K. Velusamy** (supra) held that in the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination for the purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. It was further held that the inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications. The Hon'ble Supreme Court rejected the contention advanced by the respondents in the said matter that Section 151 of the Code cannot be used for reopening the evidence or for recall of witness. The Hon'ble Supreme Court in paragraph 13 of the said reports also noted the effect of deletion of provision of Order 18 Rule 17A of the Code of Civil Procedure and held that the deletion of the said provision does not mean that no evidence can be received at all after a party closes his evidence and it all means that the amended structure of the Code found no need for such a provision as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of argument.

14. The Hon'ble Supreme Court further held that the need for the Court to act in a manner to achieve the ends of justice does not end when the arguments are heard and judgment is reserved. It was further held that the power under Section 151 of the Code or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking as the same if so used will defeat the very purpose of various amendments to the Code to expedite the 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.

15. Thus, the Hon'ble Supreme Court held that a party can be allowed to lead further evidence if the same will assist the Court in rendering justice.

16. After going through the materials on record, this Court finds that the original plaintiff died and the petitioners, who are the substituted plaintiffs, traced out certain documents with regard to the tenancy in the name of Sitaram Mishra (since deceased) and Awadesh Mishra and the surrender of tenancy.

17. After going through the pleadings of the parties, this Court finds that the documents sought to be tendered through P.W.1 on recall will necessarily aid in rendering justice. The said evidence would undoubtedly be of assistance to the Court in effective adjudication of the suit.

18. For such reason this Court is inclined to interfere with the orders impugned.

19. In **Bagai Construction** (supra) the application for recall of the witness was filed after the final arguments were heard on a number of times and the judgment was reserved and only, thereafter, in order to improve the case, the plaintiff came forward with such an application to avoid the final judgment against it. On such facts the Hon'ble Supreme Court in **Bagai Construction** (supra) refused to allow the prayer for recall of witness. The said decision being distinguishable on facts cannot come to the aid of the opposite party in the case on hand.

20. For all the reasons as aforesaid, the orders impugned are set aside. The application filed by the petitioner captioned as I under Order 18 Rule 17 read with Section 151 of the Code of Civil Procedure praying for recall of P.W. 1 stands allowed.

21. The learned trial judge is directed to proceed in accordance with law in terms of this order and to make an endeavour to dispose of the suit as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

22. With the above observations and directions, CO 3173 of 2025 stands allowed.

23. There will be no order as to costs.

24. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)

Item No.51
Aritra Ghosh
A.R. (Court)