

04.09.
2025

Ct. No. 06

Ab

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION.**

CO 3266 of 2025

Ranjit Majhi

Vs.

Rita Pramanick and another.

**Mr. Abhijit Ray,
Mr. Santu Mondal.**

... for the petitioner.

**Mr. Shyamal Chakraborty,
Mr. Debojyoti Mondal,
Mr. Swastik Polley.**

... for the opposite parties.

1. This application under Article 227 of the Constitution of India is at the instance of a third party objector in a miscellaneous case under the provisions of Order XXI Rule 99 of the Code of Civil Procedure and is directed against an order being no. 222 dated 18th July 2025 passed by the learned Judge, 6th Bench, Presidency Small Cause Court at Calcutta in Misc. Case No. 43 of 2024.
2. By the order impugned, the application for recalling of OPW-1 stood allowed.
3. Mr. Abhijit Ray, learned Advocate appearing on behalf of the petitioner submits that the decree holders/opposite parties filed an application for recalling of OPW-1 in order to fill up the lacunae in evidence. He further submits that the said application was filed after the closure of the evidence of the opposite parties and after a date for argument was fixed. Mr. Ray placed reliance upon a decision of a Co-Ordinate Bench in the case of **Nirmal Kanodia & Ors. vs. Umadevi Agarwalla & Anr.**, reported at **2025(1) Indian Civil Cases 532 (Cal)** in support of his contention that the power to recall the witness is

discretionary and should be used sparingly only in appropriate cases to enable the Court to clarify any issue or doubt.

4. Mr. Shyamal Chakraborty, learned Advocate appears on behalf of the decree-holders/opposite parties. He submits that the petitioner prayed for issuing summons upon the appropriate authority of the Kolkata Municipal Corporation for marking certain documents as exhibits. He submits that such prayer of the petitioner was rejected and the learned trial Judge marked the letter dated 16th May 2024 issued by the Kolkata Municipal Corporation as Exhibit No. 4. He further submits that the said document was marked as exhibit without giving any opportunity to the plaintiffs/opposite parties to cross-examine the opposite parties on the said exhibited document. He also submits that the petitioner filed an application under the provisions of Right to Information Act in connection with the said exhibit and the Kolkata Municipal Corporation duly furnished the information sought for by the plaintiffs/opposite parties herein. He submits that the application under the Right to Information Act and the reply thereto are necessary for the purpose of effective adjudication of the dispute involved between the parties. He further submits that the prayer for recalling of OPW-1 was made only for such limited purpose.
5. Heard the learned Advocates for the parties and perused the materials placed.
6. The petitioner filed an application under Order XXI Rule 99 read with Rule 109 of the Code of Civil Procedure, which is registered as Misc. Case No. 43 of 2024. The petitioner has adduced evidence in the said Misc. Case. The decree holders/opposite parties have also adduced their evidence.

7. It is not in dispute that a letter dated 16th May 2024 issued by the Kolkata Municipal Corporation, in which the status of the petitioner herein is shown to be recorded as 'tenant', in respect of the premises no. 33A, Radha Madhab Saha Lane has been marked as an exhibit being Exhibit No. 4. The decree-holders/opposite parties have filed an application before the Kolkata Municipal Corporation under the provisions of Right to Information Act with regard to the said letter dated 16th May 2024 wherein the name of the petitioner herein was recorded as a 'tenant' in respect of the premises in question.
8. From the application filed by the decree holders/opposite parties herein praying for recalling of OPW-1, this Court finds that the said prayer was made for the purpose of putting certain questions to the OPW-1 with regard to the application under the Right to Information Act in connection with the alleged occupation of Ranjit Majhi at the premises in question and as to whether any reply was given by the SPIO in answer to the information sought for under the Right to Information Act and as to what were the queries and the reply thereto.
9. At this stage, it would be relevant to take note the powers of the Court to recall a witness, who has already adduced evidence. The Hon'ble Supreme Court in **K.K. Velusamy v. N. Palanisamy**, reported at **(2011) 11 SCC 275** held that if a party comes across some evidence, which he could not lay his hands on earlier or some evidence in regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under Section 151 of the Code, permit the production of such 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 further held 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 the non-production of the evidence earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence. It was further held therein that there is no straight jacket formula that no application for recalling should be allowed after the suit is fixed for argument.

10. In the case on hand, the letter dated 16th May 2024 issued by the Kolkata Municipal Corporation in which the status of the petitioner herein was shown to be recorded as 'tenant' in respect of the premises no. 33A, Radha Madhab Saha Lane was marked as Exhibit -4 at the instance of the petitioner herein. From the questions sought to be raised to the OPW-1 after recall it appears that the said questions are related to the recording of the name of the petitioner herein as a tenant in respect of the said premises in question.
11. Considering the nature of the dispute between the parties in the Misc. Case, this Court is of the considered view that the questions sought to be raised upon recall are relevant and necessary in the interest of justice and will undoubtedly assist the Court to clarify the issues and in rendering justice.
12. The learned Judge of the Executing Court in exercise of its discretion thought it fit to allow the prayer for recalling of OPW-1. Since a discretion has been exercised in favour of the decree-holders/opposite parties herein for recall of OPW-1, this Court is not inclined to interfere with such exercise of discretion by the learned Judge of the

Executing Court in exercise of powers under Article 227 of the Constitution of India, as the discretion was properly exercised by the learned Judge of the Executing Court in the facts of the case on hand.

13. Mr. Ray, learned Advocate for the petitioner submits that in the event the documents are tendered by the decree holders/opposite parties herein in course of examination of OPW-1 (on recall) the petitioner be given an opportunity to cross-examine the said witness.
14. For the reasons as aforesaid, this Court is not inclined to interfere with the order impugned. CO 3266 of 2025 stands disposed of by observing that the learned trial Judge shall proceed in accordance with law and make an endeavour to dispose of the Misc. Case as expeditiously as possible preferably within a period of three months from the next date fixed without granting any unnecessary adjournments to either of the parties.
15. There shall, however, be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)