

Sl.39
16.09.2025
Court No.6
BP

C.O. 3439 of 2025

Sri Uttam Kumar Roy @ Sapui
-versus-
Shiw Charan Singh & Ors.

Mr. Kaushik Dey
Mr. Debdipto Banerjee
Mr. Soumen Banerjee
... for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated 24th July, 2025 passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah in Title Suit No. 144 of 2013.

By the order impugned the application under Section 151 of the Code of Civil Procedure praying for recalling of P.W.-1 was allowed.

Mr. Dey, learned advocate appearing for the petitioner submits that the plaintiff/opposite party herein sought to fill up the lacunae in evidence by way of recall of P.W.-1. He submits that it is the specific defense case of the petitioner that no notice to quit was served upon the petitioner. He submits that at the stage of argument the application for recall was filed in order to tender certain manufactured photocopies of documents by way of recall of P.W.-1. He further submits that such an application at the stage of

argument ought not to have been allowed by the learned trial judge.

The opposite parties filed a suit for eviction on the grounds enumerated under Section 6 of the West Bengal Premises Tenancy Act, 1997. It is not in dispute that an application under Section 151 of the Code of Civil Procedure praying for recall of P.W.-1 in order to prove certain documents was filed after the completion of evidence of the respective parties and a date was fixed for argument. After going through the application under Section 151 of the Code of Civil Procedure this Court finds that it has been specifically stated therein that the plaintiffs/opposite parties herein at the time of filing of the suit submitted the xerox copies of the documents along with the plaint which are in record of this suit. Though a written objection to such application has been filed but the petitioner did not controvert such statements made in paragraph 2 of the application under Section 151 of the Code of Civil Procedure and had only stated that those statements are matters on record.

By that as it may, the purpose for recalling of P.W.-1 is to tender the photocopy of the notice to quit, the postal receipt, A/D card and other documents in connection thereto. It is the specific case made out in the application that the original documents are not available and/or traceable in the house of the plaintiffs

and are also not in the custody and control of the plaintiffs and for which a diary was lodged with the local police station. In a suit for eviction under Section 6 of the 1997 Act the notice to quit under Section 6(4) of the 1997 Act is the foundation of such a suit. Whether the photocopies of such documents can be admitted in evidence would depend upon satisfaction of the condition for leading such evidence.

However, the said documents being relevant for the purpose of deciding the suit for eviction this Court is of the considered view that the learned trial judge was right in allowing the prayer for recall of P.W.-1. Though it is well settled that by way of recalling of a witness the lacunae in evidence cannot be allowed to be filled up but it is equally well settled that in the event recalling of a witness is necessary for the purpose of leading some evidence so as to render justice the same can be allowed even at a later stage i.e. after the completion of evidence and a date of argument has been fixed. The Hon'ble Supreme Court in the case of K.K. Velusamy Vs. N. Palaanisamy reported at (2011) 11 SCC 275 held that there is no straight jacket formula that after closure of evidence and a date for argument has been fixed recalling of witness cannot be permitted.

It is, however, made clear that the learned trial judge shall proceed in accordance with law after the P.W.-1 comes to the dock to lead evidence on recall.

For all the aforesaid reason, this Court is not inclined to interfere with the order impugned.

Accordingly, C.O. 3439 of 2025 stands dismissed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)