

Sl. 10  
03.09.2025  
Court No.6  
BP

C.O. 3284 of 2024  
With  
CAN 1 of 2025

Sri Sujan Kundu Chowdhury  
-versus-  
Smt. Shyamali Kundu Chowdhury

Mr. Tapas Mukherjee  
... for the petitioner

Mr. Debjit Mukherjee  
Mr. Kaustav Bhattacharya  
Ms. Priyanka Jana  
..for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against an order dated August 30, 2024 passed by the learned Civil Judge (Junior Division), 6<sup>th</sup> Court at Howrah in Title Suit No. 788 of 2020.

By the order impugned the application under Section 151 of the Code of Civil Procedure praying for recalling the order dated 14<sup>th</sup> August, 2024 stood rejected.

The learned advocate appearing for the petitioner submits that the learned trial judge rejected the application under Section 151 of the Code of Civil Procedure praying for recalling the order dated 14<sup>th</sup> August, 2024 on the ground that the summons was not issued to the witness. He submits that summons was issued to the DW-3. He submits that an opportunity be

given to the petitioner to take steps for issuance of summons upon the DW-3 afresh.

Mr. Mukherjee, learned advocate appears for the opposite party. He submits that the petitioner is trying to delay the hearing of the eviction suit on frivolous ground. He submits that since the petitioner did not take any steps for issuance of the summons upon the DW-3 the learned trial judge closed the evidence of the defendant witness.

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

The opposite party herein filed a suit for eviction. The evidence of DW-2 has already been completed. The petitioner claims to have taken steps for issuance of summons upon the DW-3. It appears from the order dated 14<sup>th</sup> August, 2024 that the learned trial judge recorded that in spite of issuance of summons no one is appearing to adduce evidence and accordingly closed the evidence of the defendant witness. The petitioner thereafter filed an application under Section 151 of the Code of Civil procedure praying for recalling the order dated 14<sup>th</sup> August, 2024 and to give an opportunity to the defendant to produce DW-3 as witness. Though the order dated 14<sup>th</sup> August, 2024 records that summons was issued but nothing is on record to show that the summons was duly served upon DW-3.

For such reason, this Court is inclined to grant an opportunity to the petitioner to take steps for issuance of summons upon the DW-3 afresh.

It has been submitted by Mr. Mukherjee, learned advocate appearing for the opposite party that tomorrow (04.09.2025) is the date fixed before the learned trial judge for argument.

The learned trial judge shall allow the petitioner to take steps for issuing fresh summons upon the DW-3 and fix a date for evidence of the said witness accordingly.

With the above observations and directions, the orders dated 14<sup>th</sup> August, 2024 and 30<sup>th</sup> August, 2024 are set aside.

The learned trial judge is directed to proceed in accordance with law in terms of this order and make an endeavour to dispose of the suit as expeditiously as possible but preferably by the end of the month of March, 2026 without granting any unnecessary adjournments to either of the parties.

The learned trial judge is requested to act on the basis of the communication made by the learned advocates for the respective parties.

With the above observations, C.O. 3284 of 2024 stands disposed of. In view of the order passed in this civil revisional application, the application being CAN 1 of 2025 stands disposed of.

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.)**