

D/L- 90
03/12/2025
Ct. No.-19
Aritra

RVW 300 of 2025

**Debanad Mishra
Vs.
Mrs. Kusum Sharma & Ors.
With
CAN 1 of 2025**

Mr. Saurabh Guhathakurata
Mr. Surajit Dutta
Mr. Abhratanu Sarkar

....for the applicant

Mr. Arup Krishna Das
Mr. Rajarshi Ghosh
Mr. Utsav Ghatak

....for the respondent

This is an application for review of the judgment and order dated August 28, 2025 passed in C.O.3173 of 2025. By the said order the civil revision application was allowed thereby allowing the application praying for recall of P.W.1.

The learned advocate for the review applicant submits that the judgment under review suffers from error apparent on the face of the record as the said judgment did not take into consideration the fact that the evidence of the parties have been concluded and the argument of the defendants has also been completed. He further submits that since the P.W.1 deposed as the power of attorney holder and the original plaintiff who nominated as the power of attorney holder has passed away in the meantime the P.W.1 could not have been allowed to depose upon recall.

After going through the judgment under review, this Court finds that it was noted that the evidence of the parties have been closed and the suit has been fixed for argument.

The learned advocate for the review applicant draws the attention of the Court to the order dated June 30, 2025 wherein it has been recorded that the argument of the defendant was closed.

This Court in the judgment under review has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **K.K. Velusamy vs. N. Palanisamy**, reported at **(2011) 11 SCC 275** wherein the power of the Court under Section 151 was considered. In paragraph 18 of the said decision it was specifically observed that if the courts have not applied their minds to the question whether such evidence will be relevant and whether the ends of justice require permission to let in such evidence the order calls for interference.

The learned advocate for the review applicant contended that once arguments are commenced there could be no recalling of witness. Such issue was also considered by the Hon'ble Supreme Court in **K.K. Veruswamy** (supra) wherein it was held that the need for the Court to act in a manner to achieve the ends of justice which does not end when arguments were heard and judgment is reserved. If there is abuse of the process of the Court, or if interest of justice require the Court to do

something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. It was further held that the convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is not a straightjacket formula and there can always be exceptions in exceptional or extraordinary situations, to meet the ends of justice and to prevent abuse of process of Court. It was further held therein that where the application was found to be bona fide and where the additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issue and will assist in rendering justice, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence.

In the judgment under review this Court has specifically observed that after the death of the original plaintiffs 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 and after going through the pleadings of the parties, it was specifically observed that the documents sought to be tendered through P.W.1 on recall will necessarily aid in rendering justice and such evidence would undoubtedly be of assistance to the Court in effective adjudication of the suit.

Thus, merely the fact that the defendant has advanced their arguments the same do not have any impact on the judgment under review as this Court has already observed that the evidence would assist the court in effective adjudication of the suit.

The learned advocate for the review applicant would contend that the original plaintiff has in the meantime died and, therefore, the power of attorney in favour of P.W.1 stood expired.

Record reveals that the substituted plaintiffs have also executed a power of attorney in favour of the P.W.1 which was taken note of by the learned trial judge in the order dated August 12, 2025.

The learned Trial Judge in the order dated 12th August, 2025 considered such objection of the review applicant and after noting that the present plaintiffs have filed a fresh power of attorney executed in favour of PW 1, held there is no relevance in the submission of the learned advocate for the defendant as to the locus standi of PW 1 to adduce evidence in the suit. Such finding was not challenged by the review applicant by filing a cross objection against such finding and for such reason this Court finds that there is no error apparent on the face of the record.

This Court does not find any grounds to review of the judgment and order dated August 28, 2025.

Accordingly, the application for review stands dismissed and connected application being CAN 1 of 2025 stands disposed of.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)