

Court No. 6
(265719)

04.08.2025
(A 39)
(S. Banerjee)

CO 4147 of 2024

Rumu Singha nee Sinha
Vs.
Anupam Kumar Singha & Anr.

Mr. Arijit Chatterjee
Mr. Kalidas Saha

...for the petitioner

On the prayer of the learned advocate appearing for the petitioner, leave is granted to the learned advocate-on-record of the petitioner to amend the cause-title of the civil revision application, here and now.

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 Additional District Judge, 3rd Court at Malda in Matrimonial Suit No. 176 of 2011. By the order impugned the application under Order 18 Rule 17 of the Civil Procedure Code stood rejected.

Learned advocate appearing for the petitioner submits that recalling of DW-1 is very much necessary for the purpose of proving certain medical documents. He places reliance upon an order dated

June 19, 2025 in CO 1904 of 2025 (*Lakhandar Yadav @ Ram Binay Yadav –Vs.- M/s. Abhishek Marco Pvt. Ltd. & Ors.*) in support of his contention that the recalling of witness is permissible.

There is no quarrel to the proposition of law that recalling of a witness is permissible for the purpose of leading further evidence if the same is necessary for the purpose of effective adjudication of the dispute involved in the suit. It is also well settled that recalling of witness for the purpose of filling up the lacuna in evidence is not permissible.

The petitioner filed an application under Order 18 Rule 17 of the Civil Procedure Code for recalling the DW-1 for the purpose of submitting the prescription dated January 11, 2021 and a pathological test report dated January 14, 2021.

It is not in dispute that the DW-1 was examined and cross-examined and thereafter discharged. No reasons have been assigned as to why such medical documents were not produced at the relevant point of time. The learned advocate appearing for the petitioner also could not satisfy this court as to the relevance of such document with regard to the dispute involved in the instant suit.

For such reason, this court is not inclined to interfere with the order impugned.

In *Lakhandar Yadav (supra)*, the right of the defendant to cross-examine the PW-1 was taken away. On such facts this court hold that cross-examination being a valuable right allowed the prayer for recalling of PW-1.

The said decision being distinguishable on fact, cannot come to the aid of the petitioner.

Accordingly, CO 4147 of 2024 stands dismissed without, however, any order as to costs.

(Hiranmay Bhattacharyya, J.)