

M/L- 297
26/06/2025
Ct. No.-6
Aritra

C.O. 4331 of 2024

**Sri Manas Kumar Jana
Vs.
Sk. Alauddin & Anr.**

Mr. Arijit Bardhan
Mr. Rishabh Dutta Gupta
Mr. Gourab Monal

...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the pre-emptor in a proceeding under Sections 8 and 9 of the West Bengal Land Reforms Act, 1955 and is directed against an order dated September 11, 2024 passed by the learned Civil Judge (Jr. Div.), 1st Court, Tamruk, District-Purba Medinipur in J. Misc. Case No.5 of 2017.

By the order impugned, the application praying for rejecting the evidence-in-chief filed by the OPW 2 stood rejected.

Mr. Bardhan, learned advocate appearing for the petitioner submits that the OPW 2 was impleaded as opposite party No.2 in the pre-emption case. He submits that in spite of service of summons upon the opposite party No.2, he did not appear in the miscellaneous case and the miscellaneous case was directed to proceed *ex parte* against the opposite party No.2. He submits that opposite party No.1 i.e. the pre-

emphatically cited the opposite party No.2 as a witness to support his case.

Mr. Bardhan, learned advocate appearing for the petitioner placed reliance upon the provisions of Order 16 Rule 21 of the Code of Civil Procedure (Calcutta Amendment) and submits that when a suit is proceeding *ex parte* against a party, such a party cannot be cited as a witness by the other party.

In course of his argument, Mr. Bardhan, learned advocate files a copy of the impugned application which is taken on record.

Mr. Bardhan placed reliance upon a decision of the Gauhati High Court in the case of **Anu Das vs. Padumi Das**, reported at **(2007) 1 Gauhati Law Reports 538**.

The issue that arises for consideration is whether a party against whom a suit is proceeding *ex parte* can be cited as a witness.

Order 16 Rule 21 of the Code of Civil Procedure deals with who can be summoned as a witness. Order 16 Rule 21 (Calcutta Amendment) is extracted hereinafter:-

“Calcutta (Andaman and Nicobar Island).- For Rule 21 substitute following:-

“R. 21. (1) When any party to a suit is required by any other party thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.

(2) When any party to a suit gives evidence on his own behalf the Court may in its discretion permit

him to include as costs in the suit a sum of money equal to the amount payable for travelling and other expenses to other witnesses in the case of similar standing.” (11-11-1927)”

Order 16 Rule 21 (1) states that when any party to a suit is required by any other party thereto to give evidence, or to produce a document, the provisions as to witnesses shall apply to him so far as applicable.

From a bare reading of the said provision it would be evident that any party to a suit may be called as a witness by the other party. Order 16 of the Code of Civil Procedure does not put any embargo upon summoning any party as a witness against whom the suit is proceeding *ex parte*.

Mr. Bardhan, learned advocate appearing for the petitioner, in course of his submission also could point any provision from the Civil Procedure Code which puts an embargo upon a party to cite a non-contestant party as a witness. The aforesaid view of this Court is also supported by the decision of the Gauhati High Court in **Niranjan Khodal & Ors. vs. Sukra Khodal**, reported at **(2012) 1 Gauhati Law Reports 1**, wherein it has been held that Order 16 of the Code of Civil Procedure nowhere stipulates any embargo upon summoning any non-contestant defendant as a witness by either party.

The decision of the Gauhati High Court in **Anu Das (supra)** was considered in **Niranjan Khodal (supra)**.

To the mind of this Court, the learned trial judge was right in rejecting the application filed by the petitioner herein praying for rejection of the evidence-in-chief filed by the OPW 2.

At this stage, Mr. Bardhan, learned advocate appearing for the petitioner prays for a direction upon the learned trial judge to dispose of the pre-emption application expeditiously. Considering the fact that the suit is at the evidence stage, the learned Civil Judge (Jr. Div.), 1st Court, Tamruk, District-Purba Medinipur is requested to make an endeavour to see that the J. Misc. Case No.5 of 2017 is disposed of as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

With the above observation CO 4331 of 2024 stands disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)