

OD-19

APOT/127/2025
IA NO. GA /1/2025
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SUSHIL KUMAR AGARWAL
-VS-
SURENDRA KUMAR SINGHI AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE OM NARAYAN RAI
Date : 15th May, 2025.

Appearance:
Mr. Debdut Mukherjee, Adv.
Mr. Gaurab Kr. Das, Adv.
Mr. S. P. Brahmachari, Adv.
...for the appellant

Mr. Anuj Singh, Adv.
Mr. Ajit Kr. Chaubey, Adv.
Mr. Rahul Kinkar Pandey, Adv.
Mr. Vinayak Chaubey, Adv.
...for the respondents

The Court: This appeal is directed against a judgment and order dated February 27, 2025, whereby the appellant's application being GA/5/2024 was dismissed by a learned Judge of this Court.

The appellant is the plaintiff in a suit for specific performance of an agreement relating to an immovable property. The respondents herein are defendants in the suit.

The plaintiff examined himself as PW-1 and was discharged on or about September 5, 2024 after being cross-examined.

The present application was taken out soon thereafter, on September 30, 2024, for recall of PW-1 for being re-examined. In the application it was stated that the answers to certain questions put to PW-1 in cross-examination need clarification. Therefore, re-examination of PW-1 is necessary.

The learned Judge in essence held that there was no ambiguity in the answers to the concerned questions put to PW-1. Neither was it necessary to recall PW-1 for further examination in exercise of power under Order XVIII Rule 17 of CPC nor re-examination of PW-1 is necessary as contemplated in Section 138 of the Evidence Act. Accordingly, the plaintiff's application was dismissed.

Being aggrieved, the plaintiff is before us by way of this appeal.

Mr. Mukherjee, learned advocate appearing for the appellant/plaintiff, says that it is of crucial importance that the plaintiff is allowed to disclose and rely upon a document dated May 20, 2024, which came into existence after examination-in-chief of the plaintiff was over on August 7, 2023. To prove that document, it is necessary to further examine the plaintiff on recall

as the plaintiff is a party to that document. That document is extremely relevant for the purpose of coming to a decision regarding the valuation of the suit property which is a specific issue in the suit.

Mr. Singh, learned advocate appearing for the respondents/defendants says that the questions referred to by the plaintiff in his application before the learned Single Judge and the answers thereto are not at all ambiguous. The answers are quite clear. The learned Judge rightly held that it is not necessary either to recall PW-1 for further examination or to re-examine him in terms of Section 138 of the Evidence Act. He submits that the order under appeal does not call for any interference.

To our query as to whether or not the plaintiff is entitled to rely on a document which has come into existence after the plaintiff's examination-in-chief was concluded, Mr. Singh fairly submitted that the plaintiff cannot be precluded from doing so, following due process of law. However, under garb of the same, the plaintiff cannot again address the issues covered by the questions and answers referred to by the plaintiff in his application before the learned Single Judge.

Having heard learned counsel for the parties, we are of the view that the plaintiff should be permitted to prove the document referred to above. For that purpose, he may make an appropriate application before the learned Single Judge. We may note that learned Single Judge in the impugned judgment and order has also observed that there is a procedure for relying

on additional documents. In the said application, the plaintiff may make a prayer for being permitted to prove the said document in accordance with law, if necessary, by recalling PW-1. If such an application is made, the learned Judge is requested to dispose of the same in accordance with law, in the light of the observations made in this order. However, we clarify that the matters covered by the questions and answers indicated in the plaintiff's application before the learned Single Judge shall not be raked up again if PW-1 is examined on recall.

With the aforesaid observations APOT/127/2025 along with IA No.GA/1/2025 are disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)