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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/90/2026

TAPAN GOGOI
S/O PRADIP GOGOI, R/O BOKAKHAT TOWN, WARD NO. 4, P.O.- BOKAKHAT, P.S.- BOKAKHAT, DIST.- GOLAGHAT, ASSAM, PINCODE- 785612

VERSUS

BIRAJ DEY AND 2 ORS.
S/O LATE BINOY RANJAN DEY, RESIDENT OF BOKAKHAT TOWN, BALIJAN, WARD NO. 04, MOUZA- BOKAKHAT, DISTRICT- GOLAGHAT, ASSAM, PINCODE- 785612

2:BIKASH DEY
S/O LATE BINOY RANJAN DEY
RESIDENT OF BOKAKHAT TOWN
BALIJAN
WARD NO. 04
MOUZA- BOKAKHAT
DISTRICT- GOLAGHAT
ASSAM
PINCODE- 785612

3:SMTI. RANJITA DEY
S/O LATE BINOY RANJAN DEY
RESIDENT OF BOKAKHAT TOWN
BALIJAN
WARD NO. 04
MOUZA- BOKAKHAT
DISTRICT- GOLAGHAT
ASSAM
PINCODE- 78561

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri F. Khan.

Advocates for the respondents : Shri G. Bharadwaj

Date on which judgment is reserved : **18.11.2026**

Date of pronouncement of judgment : **20.11.2026**

Whether the pronouncement is of the operative part of the judgment? : NA
Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER

The instant petition has been filed under Article 227 of the Constitution of India r/w Section 115 of the Code of Civil Procedure, 1908, challenging an order dated 23.02.2026 passed by the learned Court of Civil Judge (Jr. Division), Bokakhat, Golaghat in Misc. (J) Case No. 21/2025 arising out of Misc. (J) Case No. 07/2024 in Title Execution Case No. 01/2023. By the said order, the prayer made for recall of two witnesses for re-examination has been rejected.

2. Bereft of details, the facts of the case is that a decree was passed in a landlord-tenant suit which was for ejectment. The suit was decreed in favour of the landlord and the appeal as well as the revision were also dismissed. Thereafter, the present petitioner, who was not a party in the suit, had filed an application under Section 47 read with Order XXI Rules 97 and 101 of the CPC.

The said application was treated to be a suit in accordance with law and evidence was to be led. The petitioner had adduced evidence through a number of witnesses, and so far as witnesses nos. PW-1 and PW-5 were concerned, the evidence-in-chief was filed by way of affidavit. In the cross-examination, however, they were asked to read the affidavit and it is projected that since the said 2 (two) witnesses did not know English, they had stated that they did not know the English language. However, it was recorded that the said 2 (two) witnesses were not aware what was stated in the affidavit. It is also the case of the petitioner that subsequently the evidence-in-chief was filed for PW-2 and PW-3 and a similar approach was taken by the learned Court. The petitioner also claims to have made an application for transfer of the proceeding as the petitioner was apprehending that he was not fairly treated. The petitioner had accordingly made an application for re-examining the PW-1 and PW-5. Vide the impugned order dated 23.02.2026, the said prayer has been rejected.

3. I have heard Shri F. Khan, learned counsel for the petitioner. I have also heard Shri G. Bharadwaj, learned counsel for the respondents.

4. Shri Khan, the learned counsel for the petitioner has submitted that the recording by the learned Court in the cross-examination is not proper. It is submitted that though the evidence-in-chief which were filed by the PW-1 and PW-5 were in English language, the contents of the same were explained to them and this aspect was also stated in the affidavit. However, when the said 2(two) witnesses were asked whether they knew what was written in the affidavit and they stated that they did not know English, it has been recorded that they did not know what were the contents of the same.

5. The learned counsel for the petitioner has submitted that the aforesaid approach has caused immense prejudice to the petitioner. By referring to

Section 142 of the Bharatiya Sakshya Adhiniyam, 2023, read with Order XVIII Rule 17 of the CPC, he has submitted that the application for re-examination of PW-1 and PW-5 ought to have been allowed in the interest of justice and rejection of the same is against the objective of the aforesaid provisions of law.

6. By drawing the attention of this Court to the statements made in the chief-examination, the learned counsel for the petitioner has submitted that there was a clear statement that the contents of the affidavit were explained to them. He has accordingly submitted that the impugned order dated 23.02.2026 is liable to be interfered with and the petitioner be allowed to re-examine the PW-1 and PW-5.

7. *Per contra*, Shri Bharadwaj, the learned counsel for the respondents has submitted that the present move is nothing but to delay the proceeding and also to prevent the plaintiff from having the fruit of the litigation. It is submitted that his clients had instituted the suit for ejectment of the tenant in the year 2016, which was accordingly decreed. The tenant was unsuccessful in the appeal as well as the revision which was filed before this Court. It is thereafter that the present petitioner, who is none but the brother-in-law of the defendant, had filed the application under Section 47 read with Order XXI Rules 97 and 101 of the CPC. Be that as it may, the same application was registered and the petitioner had adduced evidence through the aforesaid PW-1 and PW-5 by way of affidavit. In the cross-examination, however, the said 2(two) witnesses had clearly stated that they were not aware what was there in the affidavit. He has submitted that when the witnesses could not stand by their chief-examination and stood exposed in the cross-examination, giving a further chance for re-examination would not be in the interest of justice. He has submitted that Section 142 of the BSA only states about the order of examination and is not an

enabling provision, and the enabling provision is Order XVIII Rule 17 of the CPC wherein a discretion is given to the Court to recall and re-examine witnesses. He has submitted that such discretion has to be exercised based on the facts and circumstances and only in the interest of justice. He has submitted that rejection of the application for re-examination of PW-1 and PW-5 is in consonance with the due exercise of such discretion.

8. In this connection, he has placed reliance on a judgment of the Hon'ble Supreme Court reported in ***2026 SCC OnLine SC 1484 (K. Bharathamma vs. Bandaru Sakku Bai and Ors.)*** and the observations made therein have been pressed into service. He has submitted that under such facts and circumstances, there is no infirmity or illegality in the impugned order dated 23.02.2026 and the present application is liable to be dismissed.

9. In his rejoinder, the learned counsel for the petitioner has submitted that allowing the application for re-examination would not cause any prejudice to the respondents and rather would cause prejudice to his client. He has submitted that after such re-examination, the respondents would still have the chance to cross-examine. He has also submitted that the transfer petition is pending before the appropriate Court.

10. The rival submissions advanced in the Bar have been duly considered and the materials placed before this Court have been carefully examined.

11. From the materials on record and the submissions made, it appears that the respondents had instituted the suit for ejectment against the tenant which was decreed, and the tenant was also unsuccessful in the appeal and thereafter in the revision filed before this Court. Thereafter, the present application was filed under Section 47 read with Order XXI Rules 97 and 101 of the CPC. It

however transpires that the applicant is none but the brother-in-law of the defendant. However, without going into that aspect of the matter, the said application was duly registered under the provisions of law and as per the principles laid down, the same was fixed for evidence in which the petitioner had adduced evidence by way of affidavit. In the cross-examination of PW-1 and PW-5, however, it transpires that the 2 (two) witnesses had made a statement that they were not aware of the contents of the affidavit. While it is the case of the petitioner that a wrong interpretation has been given while recording the cross-examination, it is the submission made on behalf of the respondents that the recording was correctly made. It is submitted by the petitioner that while the said two PWs 1 and 5 had said that they were not conversant with the English language, it has been recorded that they were not conversant with the contents of the affidavit. The aforesaid proposition has however been stoutly disputed by the learned counsel for the respondents.

12. To examine the issue, the cross-examination recorded may be looked into. So far as PW-1 is concerned, the cross-examination recorded is as hereunder:

> "***XXX Cross-examination XXX***
>
> *Shri Nripen Das is the brother of my wife. I had looked after the hotel situated at the suit premises until 15 (fifteen) days prior to today.*
>
> *I do not know the details about the original suit filed by the plaintiff or the decree passed therein.*
>
> *I do not know what is written in my examination-in-chief on affidavit.*
>
> *It is not a fact that I have filed a false case on behalf of the judgment debtor.*
>
> ***R.O., Translated & A.C."***

13. So far as PW-5 is concerned, the cross-examination is as hereunder:

"***XXX Cross-examination XXX***

My ancestral house is at Bajali District. I came to Bokakhat about 28 (twenty-eight) years ago. I do not know the contents of my examination-in-chief.

R.O., Translated & A.C."

14. A bare look of the cross-examination would however show that the witnesses PW-1 and PW-5 had clearly stated that they were not aware of the contents of the chief-examination. Further, PW-1, who is the brother-in-law of the judgment debtor had stated that he did not even know the details of the original suit or the decree passed. It also appears that the question was indeed put in vernacular and the same were translated and recorded in English. The said procedure is a normal practice that while the recording of cross-examination is in English language, the questions are put in a language which is understood by the witnesses. It is not the case of the petitioner that the witnesses could not understand the question which was put to cross-examination. In any case, if the present plea is accepted, the entire purpose of having a cross-examination would be defeated as it is only to ascertain the veracity and genuineness of the chief-examination that the procedure and scope of cross-examination is available under the law.

15. While the petitioner has relied upon the provisions of Section 142 of the BSA read with Order XVIII Rule 17 of the CPC, this Court finds force in the contention advanced by the learned counsel for the respondents that Section 142 of the BSA is not an enabling provision and simply states the sequence of examination of a witness. On the other hand, though Order XVIII Rule 17 of the CPC can be termed to be an enabling provision, the reading of the said provision would clearly show that a discretion is vested on the Court in considering such a

prayer. For ready reference, Order XVIII Rule 17 of the CPC is extracted hereinbelow:

> "*The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.*"

16. While interpreting the aforesaid provision, the judicial precedents are categorical that such re-examination cannot be allowed on a routine manner and it has to be exercised by taking into consideration the facts and circumstances and only in the interest of justice. In the case of ***K. Bharathamma*** (supra), the Hon'ble Supreme Court has made the following observations:

> "*6. Summing up on the scope, nature and applicability of the provision of Order XVIII Rule 17, CPC, on the basis of the provisions of law laid down in the judicial decisions highlighted above, this provision is in the nature of power-cum-discretion vested in the court. It aims to become an aid to the court in the adjudicating process of the suit. The provision is in the nature of a facilitator to the court in the suit proceedings, to be used and invoked within the discipline of the trial and within the bounds of the rules of evidence.*
>
> *6.1. The parameters for invocation and use of Order XVIII Rule 17, CPC, are thus well-established. It is not meant for a routine exercise. Nor it is a provision which can be employed on mere asking by a party, unless the court wants any clarification on any aspect of the evidence already led in the proceedings. Though the provision could be invoked at the instance of a party to the suit, basically and essentially it is the discretionary power to be exercised by the court itself. This provision can be put into play neither by the party nor by the court itself to permit to fill up the gaps, omissions or lacunae in the evidence.*
>
> *6.2. It is not permissible that the evidence by a party already led and settled is allowed to be improved by reopening the evidence or recalling the witness under this Order of CPC. The provision is not a tool whereby a party can embellish the evidence, fill in the omissions therein or refine the evidence at a later stage.*"

17. It may be mentioned that prior to the amendment of 2002, Rule 17 A existed in Order XVIII which had expressly provided for reopening of evidence and recall of witness. However, the said provision has been deleted. The aforesaid position has been explained by the Hon'ble Supreme Court in the case of ***K.K. Veusamy Vs. N. Panisamy*** reported in***(2011) 11 SCC 275*** wherein the following observations have been made.

> "***13.*** *The Code earlier had a specific provision in Order 18 Rule 17-A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1-7-2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.*
>
> ***14.*** *The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose."*

18. The principles laid down in the context of Order XVIII Rule 17 CPC is

consistent that the same cannot be permitted to fill up a lacunae. In the case of ***Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate*** reported in ***(2009) 4 SCC 410***, the following observations have been made:

> "***28.*** *The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.*
>
> ***29.*** *It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination."*

19. This Court, upon consideration of the facts and circumstances and the principles holding the field, is of the opinion that the petitioner is unable to make out a case for interference. In any case, the exercise of revisional jurisdiction is a circumscribed power and is mainly on the aspect of examining whether the order impugned has been passed in excess of jurisdiction or without jurisdiction. This Court has also noticed that there is no material illegality or irregularity in passing the said order.

20. In view of the aforesaid discussion, the petition stands dismissed.

JUDGE

Comparing Assistant