

15. 12.05.2025
Court No.06.
(Pritam)

CO 1080 of 2026

Anup Kumar Metya @ Anup Metya & Anr.
-Vs.-
Samir Kumar Mishra.

Mr. Rabindranath Mahato,
Mr. Aritra Shankar Ray

.....for the petitioners.

Mr. Amit Ranjan Pati,
Ms. Swastika Chowdhury,
Ms. Khadijatul Kubra,
Ms. Ilika Nag,
Mr. Avijit Chatterjee

.....for the opposite party.

1. This revisional application is directed against an order dated February 23, 2026 passed by the learned Civil Judge (Junior Division), 2nd Court at Midnapore in Title Suit No.84/2005, whereby the petitioner's application for recalling of witness has been turned down by the learned Trial Court.

2. Title suit No.84/2005 has been filed by the opposite party praying for a decree of declaration and *khas* possession of the suit property after evicting the petitioners there from.

3. The said suit has matured to the stage of argument. At a time when the date was fixed for filing written notes of arguments by the defendants, the defendants, i.e., the petitioners herein filed an application for recalling of a witness for bringing as evidence two

documents. The petitioners contended that they could not produce such document at the time of adduction of evidence since the learned advocate representing the defendants had expired due to Covid-19.

4. The application has been dismissed by the learned Trial Court by observing that the petitioners have been delaying the hearing of the suit. Hence, the revisional application.

5. Mr. Mahato, learned advocate appearing for the petitioners submits that the learned trial court has rejected the petitioners' application without appreciating the relevance of the documents that have been sought to be tendered in evidence upon recall of witness. In support of his contention, he relies on a judgment of the Hon'ble Supreme Court in the case of ***K.K. Velusamy vs. N. Palanisamy*** reported at **(2011) 11 SCC 275**. He submits that in the said judgment the Hon'ble Supreme Court has observed that if there is a time gap between the completion of evidence and the hearing of arguments and in the interregnum, if a party comes across some evidence which he could not lay his hands upon earlier or some evidence comes into existence, then the Court may in exercise of its inherent power under Section 151 of the Code, permit production of such evidence.

6. Mr. Pati, learned advocate appearing for the opposite party submits that the petitioners have been wholly responsible for the long pendency and delayed

hearing of the suit. It is further submitted that the documents that the petitioners now seek to produce in evidence are not at all relevant for the determination of the matters in issue in the suit.

7. He contends that the suit is one for declaration of title and recovery of possession and in such view of the matter even if the documents that have been sought to be exhibited by the recalling the witness, (which are documents of permission/sanction granted by the gram panchayat for construction of a house) are permitted to be exhibited would not affect the ultimate result in the suit.

8. Heard learned advocates appearing for the respective parties and considered the material on record.

9. It is evident from the order dated February 23, 2026 that the said date was fixed for arguments by the defendants "as a last chance" after filing written notes of arguments "as last chance". It is on such date that an application for recall of witness was filed by the defendants/petitioners.

10. The application that has been filed by the petitioners seeking recall of witness alleges that the documents had been provided to the erstwhile learned Advocate for the petitioners who passed away during the Covid-19 pandemic on September 01, 2020. It is the petitioners' case that such document could not be exhibited due to some confusion/mistake. There is no

explanation as to what was the confusion. There is nothing on record to suggest as to why those documents were not handed over to the present learned Advocate or to demonstrate that if the same were handed over to the present learned Advocate why were the same not exhibited in evidence. Mere using the expression “*bhramo basato*” (transliteration of the Bengali expression) would not be sufficient to explain the long delay of six years and would not show due diligence, when evidence in the suit was concluded on March 15, 2024. There is no explanation as to why those documents could not be relied on during such period.

12. Although the learned trial court has rejected the petitioners’ application basing its conclusion on the dilatory tactics adopted by the defendants without advertng to the necessity of the said documents being exhibited in evidence, upon perusal of the application made before the learned Trial Court, the same does not inspire confidence of the court that the petitioners could not lay hands upon such document earlier as already discussed hereinabove.

13. The judgment of the Hon’ble Supreme Court in the case of ***K.K. Velusamy*** (*Supra*) mandates that if in the gap between evidence and hearing a party comes across some evidence “*which he could not lay his hands on earlier*” and if the same is found relevant and necessary in the interest of justice the same may be allowed to be

produced. In the case at hand there is nothing on record to suggest that the petitioner could not lay his hands on such documents earlier as already discussed hereinabove.

14. Furthermore in the same case, the Hon'ble Supreme Court has also held that such power is to exercised in exceptional and extraordinary circumstances. No such extraordinary case appears to have been made out in the case at hand, especially in view of the fact that the suit is for recovery of possession and the documents sought to be exhibited are not documents of title but only show that the petitioning defendants had been accorded permission by the relevant Gram Panchayat to raise construction. If the opposite party succeeds in proving his case, even if the petitioner's construction is found to be based on a sanction/permission it would not help.

15. For all the reasons aforesaid, this Court finds no reason to interfere with the order impugned. The order dated February 23, 2026 is sustained.

16. CO 1080 of 2026 is dismissed. There shall be no order as to costs.

17. The learned trial court is requested to conclude the hearing of the suit and dispose of the same as expeditiously as possible.

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

(Om Narayan Rai, J.)