

Item-
4. 01-07-2026

CO 1322 of 2026

sg Ct. 6

Naren Saha
Versus
Pradip Saha

Mr. Susenjit Banik
Mr. Mrinal Saha

...for the petitioner

Ms. Atreyee De

...for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the defendant and is directed against the orders dated January 16, 2026 and March 12, 2026 both passed by the learned Civil Judge (Junior Division) at Sealdah in Title Suit No. 148 of 2019.

By the order dated 16th January, 2026, the evidence of the plaintiff stood closed and a date was fixed for evidence of the defendant's witness. The petitioner filed an application under Section 151 of the Code of Civil Procedure praying for recalling of the order dated 16th January, 2026 and for an order permitting the petitioner to cross-examine the PW-1. Such application stood rejected by the order dated 12th March, 2026. Being aggrieved, the petitioner has approached this Court.

Mr. Banik, learned Advocate appearing for the petitioner submits that by an order dated 4th December, 2025, the show cause petition of the petitioner was accepted at a cost of Rs.500/- to be paid by the petitioner to the opposite party and 16th January, 2026 was fixed for payment of cost. He submits that since the order dated 16th January, 2026 was not passed in open court, the petitioner was not aware that by the self-same order dated 16th January, 2026, the petitioner

was also directed to cross-examine the PW-1 on 16th January, 2026. In support of such contention Mr. Banik places relies upon the case status report as available in the e-Court India Services.

Mr. Banik further submits that the learned Trial Judge, without considering the fact that the petitioner was not aware of the fact that 16th January, 2026 was fixed for cross-examine the PW-1, rejected the application under Section 151 of the Code of Civil Procedure.

Per contra, the learned Advocate appearing for the plaintiff/opposite party submits that the petitioner did not cross-examine the PW-1 on 16th January, 2026 as the learned Advocate for the petitioner was not ready with the matter and in support of such contention, she places relies upon the statement made in paragraph 5 of the civil revisional application. She however, places reliance upon the decision of the Hon'ble Supreme Court in the case of ***Ishwarlal Mali Rathod vs. Gopal and Others*** reported in ***(2021) 12 SCC 612*** in support of her contention that if the party to a proceeding has misused the liberty and grace shown by the Court no further liberty should be granted to such litigant to cross-examine the PW-1 after recalling the order of closure of evidence of the plaintiff.

Heard the learned Advocates for the parties and perused the materials placed.

It is not in dispute that the petitioner was asked to show cause as the petitioner did not cross-examine the PW-1 on a previous occasion and the cause shown by the petitioner

was accepted subject to payment of cost of Rs.500/- to be paid by the petitioner to the opposite party. By the order dated 4th December, 2025, the learned Trial Judge fixed 16th January, 2026 for payment of cost and for cross-examination of PW-1. It is not in dispute that the cost was paid within the time limit as indicated in the order dated 4th December, 2025. However, on 16th January, 2026, no adjournment petition was filed by the petitioner which prompted the learned Trial Judge to close the evidence of the plaintiff and to fix a date for the evidence of the defendant's witness. The petitioner filed an application under Section 151 of the Code of Civil Procedure to recall the order dated 16th January, 2026 and to allow the petitioner to cross-examine the PW-1. Petitioner has annexed a copy showing the case status downloaded from the e-Court India Services in support of his contention that the 16th January, 2026 was fixed only for payment of cost, From the case status report it appears that 16th January, 2026 was fixed for payment.

In *Ishwarlal Mali Rathod* (supra) the Hon'ble Supreme Court after considering the fact of the said reported case that 10 adjournments were given between 2015-19 and twice the orders were passed granting time for cross-examination as last chance and that too at one point of time even a cost was also imposed and even thereafter also when lastly the High Court passed an order extending the time specifically mentioning therein that no further time shall be extended and/or granted, still the petitioner-defendant never availed of the liberty and the grace shown. On such factual

matrix it was held that the petitioner-defendant misused the liberty and the grace shown by the court.

The said decision is, however, distinguishable on facts and cannot come to the aid of the opposite party.

However, considering the fact that the cross-examination is a valuable right, this Court is inclined to grant a last opportunity to the petitioner, however, subject to certain stringent conditions.

On a query of the Court, the learned Advocate for the parties uniformly submit that 3rd July, 2026 is the date fixed before the learned Trial Court. In view of the reasons as stated hereinbefore, the order dated 16th January, 2026 insofar as it relates to closing the evidence of the plaintiff and fixing a date for evidence of the defendant as well as the order dated 12.03.2026 are set aside subject to payment of cost of Rs.5,000/- to be paid by the petitioner to the opposite party by 4 P.M. tomorrow (i.e.,02.07.2026) through the learned Advocate for the opposite party before the learned Trial Court and upon payment of such cost, petitioner shall be allowed to cross examine the PW-1.

The PW-1 is directed to remain present on the next date fixed on 3rd July, 2026 to face the cross-examination.

It is, however, made clear that if the cost as directed hereinbefore is not paid within the time limit as indicated hereinbefore, this order shall automatically stand recalled without any further reference to this Court.

This civil revisional application stands allowed. There shall be, however, no order as to costs.

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

(Hiranmay Bhattacharyya, J.)