

09.06.2026
Ct. No.6
Sl. No.5
skg

C.O. 1352 of 2025

**Sumitra Gantait & Ors.
Vs.
Jayanta Gantait**

Mr. Prasanta Banerjee, Adv.
Mrs. Ratna Das, Adv.

...for the petitioners

Mr. Jayanta Kumar Mondal, Adv.
Mr. Sayantan Rakshit, Adv.

...for the opposite party

1. This revisional application is directed against an order dated March 17, 2025 passed by the learned Civil Judge (Jr. Div.), 2nd Court at Serampore, Hooghly in Title Suit No. 226 of 2019 whereby the petitioners' application under Section 151 of the Code of Civil Procedure, 1908 praying for recall of PW1 for the purpose of further cross-examination has been rejected.
2. The opposite party has instituted Title Suit no. 226 of 2019 against the petitioners inter alia, for a decree of partition. In the said suit, at the stage of cross-examination of the plaintiff's witness no. 1 (PW1) an adjournment was prayed for on behalf of the petitioners. Such adjournment was granted, subject to payment of costs of Rs.500/-, while fixing March 22, 2024 as the date of payment of cost and for cross-examination of PW1.

3. On March 22, 2024 an application was filed by the petitioners praying for waiver of the cost and it was submitted before the Court that the petitioners did not want to proceed with the cross-examination of PW1 any more. The learned Trial Court accepted such prayer and closed the evidence on behalf of the plaintiffs.
4. Almost one year later on February 18, 2025 an application was filed by the petitioners, seeking orders permitting the petitioners to cross-examine PW1 further. By that time, the evidence on behalf of the DW1 and DW2 had already been closed. The learned Trial Court considered the application of the petitioners and by the order dated March 17, 2025 rejected the same, inter alia, observing that *“plaintiff may suffer irreparable loss and injury as the evidence on the side of both the parties have been completed and there may be reopening of the evidence which has already on record”* and further that *“from the conduct of the defendants, it can be presumed that the defendants are not at all diligent in the proceeding of the matter”*.
5. Feeling aggrieved by the aforesaid order the petitioners have approached this Court by way of the present revisional application.
6. Mr. Banerjee, learned Advocate appearing for the petitioners submits that the order impugned suffers from serious errors inasmuch as the petitioners’ right of

further cross examination of PW1 has been seriously impaired by the order impugned. It is submitted that the Court is not powerless to pass order permitting the petitioners to cross-examine PW1 further.

7. Mr. Mondal, learned Advocate appearing for the opposite party submits that the order impugned is absolutely justified and calls for not interference. He invites the attention of this Court to the orders dated March 22, 2024, June 3, 2024, September 18, 2024 and September 30, 2024 to demonstrate that the petitioners have consciously participated in adduction of evidence and the evidence of DW2 has been concluded.
8. He relies on a judgment of the Hon'ble Supreme Court in the case of ***Shubhkaran Singh v. Abhayraj Singh & Ors.*** reported in **2025 (3) ICC 471 (S.C)** to contend that recall of witness is the exclusive domain of Court and is not a matter of right of the party to the suit. He next relies on a judgment of the Hon'ble Supreme Court in the case of ***Kanwar Singh & Ors. v. Nanbai & Ors.*** reported in **2009 (3) ICC 674** to contend that the conduct of a litigant is an important aspect which is to be kept in mind while directing recall or further cross-examination upon initial closure of evidence.
9. Heard the learned advocate appearing for the respective parties and having considered the material on record.

10. It is evident from the order dated March 22, 2024 that the petitioners had filed a petition before the learned Trial Court and submitted that they do not want to proceed with cross-examination of PW1 any more while seeking waiver of payment of cost of Rs.500/- that had been imposed on the petitioner. The subsequent orders dated June 3, 2024, September 18, 2024 and September 30, 2024 reveal that evidence on behalf of the defendants had begun and the petitioners had been adducing evidence. Almost one year after having submitted before the Court that the petitioners did not wish to cross-examine PW1 any further and upon closure of PWs' evidence, the petitioners have filed an application seeking opportunity to further cross-examine PW1.

11. The petitioners' assertions that they lost their opportunity to cross examine PW1 further by reason of a misadvice being given or a wrong step being taken by their erstwhile learned Advocate does not appear to be tenable. There is nothing on record to suggest as to when did the petitioners take a change from the erstwhile learned Advocate and what steps have been taken by the petitioners in respect of the alleged ill advice.

12. **Shubhkaran Singh** (supra) is a clear authority on the point, that recall of witness for the purpose of examination and cross-examination lies within the

discretionary domain of the Court. In the case at hand it does not appear that the learned trial Court has exercised discretion illegally or arbitrarily.

13. Furthermore, as already indicated above the conduct of the petitioners is such that the petitioners cannot claim to be entitled to seek opportunity of further cross-examination of PW1 after themselves having asked for closure thereof and gone ahead with their evidence. The judgment of the Hon'ble Supreme Court in the case of ***Kanwar Singh*** (supra) has deprecated the practice of allowing cross-examination in cases where the relevant litigant is not diligent.

14. For all the reasons aforesaid this Court does not find any room to interfere with the order dated March 17, 2025.

15. Accordingly, C.O. 1352 of 2025 stands dismissed. There shall be no order as to costs.

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

(Om Narayan Rai, J.)