

CO. 1658 of 2026

23.06.26
D/L
Sl-41
Ct. 06
(Samar)

**Smt. Asha Kapur
Vs.
Buckingham Court Private Limited.**

Mr. Samrat Chowdhury,
Ms. Paroma Sengupta,
Ms. Anusmita Das,
... for the petitioner.

Mr. Prashant Agarwal,
Mr. Badal Singh,
.... for the opposite party.

Mr. Souvik Sarkar,
.... for the opposite party no. 1.

Mr. Indranil Chanda,
..... for the opposite party no. 2.

1. This revisional application is directed against an order dated April 22, 2026 passed by the learned Judge, Bench-IV, Presidency Small Causes Court at Calcutta whereby the petitioner's application for taking the suit off the *ex parte* board accompanied with a petition under Section 5 of the Limitation Act, 1963 as well as an application for recalling an order dated April 08, 2025 have been disposed of subject to payment of costs of Rs. 3,000/- (Rupees Three Thousand only) with an observation that the petitioner would be permitted to participate in the arguments.
2. Ejectment Suit No. 601 of 2016 has been instituted by the opposite party for eviction of the petitioner. In the said suit, the petitioner's defence has been

struck out. The order sheets annexed to the revisional application reveal that the petitioner had filed '*Hazira*' till February 05, 2025 when the next date for peremptory hearing was fixed.

3. On April 08, 2025 the petitioner remained unrepresented and accordingly, the suit was directed to proceed *ex parte* against the petitioner and the opposite party (plaintiff) was permitted to adduce evidence.
4. Adduction of evidence on behalf of the opposite party was concluded and closed on the said date itself i.e. on April 08, 2025 and then May 13, 2025 was fixed as the next date for *ex-parte* argument.
5. Ultimately on February 12, 2026 the petitioner filed three applications through her learned Advocate. By the first application the petitioner sought for recalling of the order dated April 08, 2025 whereby the suit was posted for *ex parte* hearing.
6. By the second application, which was under Section 5 of the Limitation Act 1963, the petitioner prayed for condonation of delay in preferring the earlier application and by the third application prayer was made for taking the suit off the *ex parte* board and for placement thereof at the peremptory hearing board.
7. All the three applications have been disposed of by the order impugned by allowing the defendant

petitioner to contest the suit only by participating in arguments subject to payment of costs of Rs. 3,000/- (Rupees Three Thousand only).

8. Feeling aggrieved by such order, the petitioner has approached this Court by way of the present revisional application.
9. Mr. Chowdhury, learned advocate appearing for the petitioner submits that the learned Trial Court has failed to appreciate that the petitioner went unrepresented before the learned Trial Court by reason of miscommunication on the part of the learned advocate representing the petitioner before the learned Trial Court.
10. Inviting the attention of this Court to paragraphs 5 to 10 of the application seeking recall of the order dated April 08, 2025 it is submitted that proceedings remain unattended not due to the fault of the petitioner but the learned advocates who represented in the petitioner and that the petitioner should therefore not be penalized.
11. Mr. Chowdhury, relies on a judgment of the Hon'ble Supreme Court in the case of ***Rafiq and Another Vs. Munshilal and Another*** reported at ***AIR 1981 SC 1400*** to buttress his contention that a litigant should not be penalized for the fault of the lawyer engaged by such litigant.
12. He further relies on a judgment of the Hon'ble

Supreme Court in the case of ***Modula India Vs. Kamakshya Singh Deo*** reported at **(1988) 4 SCC 619** to demonstrate that despite defence being struck out, a defendant would be entitled to cross-examine the plaintiff's witness and to address the Court in arguments on the basis of the plaintiff's case.

13. Mr. Agarwal, learned advocate appearing for the opposite party submits that the series of the orders passed by the learned Trial Court right from April 08, 2025 till the one which has been impugned before this Court would reveal that the petitioner has chosen not to be present before the learned Trial Court and it is not merely a case of miscommunication by the learned advocate.
14. He has taken the Court through the orders passed by the learned Trial Court to demonstrate that on August 26, 2025 the petitioner appeared through an advocate who had been newly engaged upon taking a change from the erstwhile advocate and prayed for adjournment.
15. It is submitted that on that day itself, a prayer for taking the suit off the *ex parte* board could have been made but such prayer was not made for obvious reasons.
16. He then takes the Court through the order dated December 22, 2025 to demonstrate that the

petitioner took a change again and a fresh Vakalatnama was filed through another learned Advocate. It is submitted that on that day, also no application seeking vacation of the order directing the suit to be heard *ex parte* was made.

17. He then points out that such application was made for the first time only on February 06, 2026 and submits that in such view of the matter, the learned Trial Court has rightly rejected the petitioner's prayer to recall the order dated April 08, 2025 and has allowed the petitioner to participate in the arguments subject to payment of costs.

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

19. From the order sheets annexed to the revisional application it is clear that the defendant petitioner was in the know of the suit being posted for *ex parte* hearing at least as early as on August 26, 2025 when the petitioner re-entered appearance through a newly engaged advocate who filed a fresh Vakalatnama.

20. There is substance in the submission made on behalf of the opposite party that on the said date itself an application for recall of the order posting the suit for *ex parte* hearing could be made but such recourse was not taken. There is nothing on

record to explain as to why such application could not be made on that date and why a mere prayer for adjournment was made. This Court notes that such prayer for adjournment also stood rejected by the learned Trial Court.

21. The subsequent orders reveal that the petitioner remained unrepresented on the next two days as well. Thereafter on December 22, 2025, when the petitioner appeared once again through another learned advocate, then also no prayer to take the suit off the *ex parte* board was made. The petitioner on that date undertook to file an application therefore on the next date.
22. The petitioner's conduct does not suggest any iota of due diligence. Change of counsel twice in succession and failure of the petitionr to take appropriate corrective steps in order to exercise her right to participate in the proceedings to the extent permissible in law, upon her defence itself being struck out, are indicative of a design to protract and prolong.
23. Mr. Chowdhury's reliance on the judgment of the Hon'ble Supreme Court in the case of **Rafiq and Another (supra)** would not aid the petitioner in facts of the present case. Firstly this is not a case of a single default by reason whereof a litigant's case has been dismissed. Records reveal that there has

been a series of lapses. The petitioner has failed to monitor her case for an unduly long period and remained unrepresented.

24. It is evident from the order dated April 08, 2025 that the evidence of the plaintiff/opposite party was closed on that date itself. It is well settled that seeking recall of witness for the purpose of cross-examination cannot be sought as a matter of right. In the facts of the present case, the conduct of the petitioner does not inspire confidence of the Court to order recall of the opposite party for the purpose of being cross-examined. In fact the Court cannot turn a blind eye to the fact that there is no fault of the opposite party also and as such the opposite party also should not be made to suffer an order recalling its witness for the purpose of cross-examination through evidence was closed almost one year back.

25. The judgment of the Hon'ble Supreme Court in ***Modula India (supra)*** lays down the salutary proposition that despite striking out of defence of a defendant the right of such defendant to cross-examine the plaintiff's witness and the address the Court in arguments on the basis of the plaintiff's case remains reserved. It cannot be contended by the petitioner in the case at hand that such right was not there with the petitioner. In fact, the

petitioner chose not to exercise such right in the manner the petitioner should have done going by the law governing the field.

26. For all the reasons aforesaid, this Court is not inclined to interfere with the discretion exercised by the learned Trial Court and the order impugned therefore calls for no interference.

27. With the above observations, CO. 1658 of 2026 stands dismissed. There shall be no order as to costs.

28. 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.)