

Item No.28
28.01.2026
Court. No. 6
GB

C.O. 2656 of 2025

Sri Ranjan Dey
Vs.
Sri Santanu Dey & Ors.

Mr. Siva Prasad Ghose,
Mrs. Neha Roy,
Mr. Sijit Sahoo

...for the Petitioner.

Mr. Indrajit Biswas,
Mr. Rajib Ganguly,
Mr. Rakesh Kumar Pandey

...for the Opposite Parties.

1. The petitioner is aggrieved by an order dated July 7, 2025, passed by the learned Civil Judge (Junior Division), 2nd Court at Barrackpore in Title Suit No.2 of 2012.
2. According to the petitioner, who is the defendant no.1 in the suit, the said order is erroneous as the plaintiff was permitted to fill up a lacuna in the plaint case as also in the evidence. It is submitted by Mr. Ghose, learned advocate for the petitioner that the existence of the document was neither pleaded nor mentioned in the plaint and in the evidence in chief. Suddenly, after nine years from the date of coming into possession of the said document, an application was filed to recall the P.W.1, so that the document could be adduced in evidence. Mr. Ghose submits that the cross-examination of the P.W.1 would clearly indicate that he accepted the

construction was authorized and also stated that there was no encroachment.

3. Reliance is placed by Mr. Ghosh on the decision of this Hon'ble Court in the matter of ***Shyamapada Neogy and Others versus Asoke Kr. Biswas and Others*** reported in ***71 CWN 747***, in support of the contention that only the court has the discretion to invoke the power of recall under Order 18 Rule 17 of the Code of Civil Procedure, even at the instance of a party, when unforeseen situations had developed, provided that, it did not cause any surprise or prejudice to the other party. The decision of the Hon'ble Apex Court in the matter of ***Shubhkaran Singh versus Abhayraj Singh and Others*** reported in ***2025 (3) Indian Civil Cases 471 (S.C)*** is relied upon in support of the contention that the power of recall vests only on the court under Order 18 Rule 17 of the Code of Civil Procedure. A witness cannot be recalled at the instance of the party for the purpose of examining, cross-examining or re-examining. Reliance is also placed on the decision of this Court in the matter of ***Ajit Kumar Das versus Dilip Kumar Ghosh and Another*** reported in ***AIR 2024 Calcutta 194*** on a similar proposition that recall of witness cannot be allowed as a matter of course and

definitely not at a belated stage when the opportunity available had been missed out.

4. Learned advocate for the opposite parties submits that the document is necessary for proper adjudication of the dispute between the parties. Although belated, the stop work notice which was issued by the municipality is relevant. It is further submitted that the plaint case is built on the basis that the construction is not only unauthorized, but also encroached a portion of the property enjoyed by the opposite party/plaintiff.
5. The first contention of Mr. Ghose that the foundation of the said document was not laid in the plaint, is not accepted by the court. The plaint case runs on the basis that the plaintiff had reason to believe that the construction of the defendant no. 1 was without any building plan and without leaving any statutory side space. Encroachment of the land of the plaintiff was also found. In support of such contention, the plaintiff wants to bring on record a stop work notice issued by the municipality. Thus, this document is not something which will take the defendant no.1 by surprise. The defendant no.1 has continuously defended the suit with the positive case that the construction was as per the building plan sanctioned by the municipality and in accordance

with law. The document is a notice, which was issued to the petitioner/defendant no.1.

6. Paragraph 20 of the plaint clearly indicates that the repeated visits were made by the plaintiff to the municipality. Objections were raised before the municipality with regard to the alleged illegal construction. It is, thus, the specific case of the plaintiff that the municipality, which is the defendant no.2 and which is not contesting the suit despite service of notice, are in collusion.
7. Under such circumstances, the notice which was supplied to the plaintiff by the Municipality under the Right to Information Act, cannot be said to be unnecessary or extraneous to the lis involved. The question is how the defendant no.1 can be compensated for the delay. Undoubtedly, if the document is brought on record, it does not mean that the court accepts its evidentiary value and the contents thereof have to be proved. The probative value thereof shall be decided by the court at the trial. Not allowing the plaintiff to rely on the document may cause prejudice and the learned trial Judge has exercised discretion and has held that to uncover the truth and to adjudicate the issues involved, the document should be brought on record. The law has been settled by the Hon'ble Apex Court to the extent that even after deletion of Order

18 Rule 17A of the Code of Civil Procedure, a witness can be recalled by the court in exercise of inherent power. However, such inherent power must be exercised sparingly and in exceptional circumstances.

8. In my view, the omission to produce the said document at the appropriate stage, shall not cause prejudice to the petitioner, and the petitioner can be compensated with cost. The defendant no.1 was aware of the notice as it was issued to the defendant no.1.
9. Power under Article 227 of the Constitution of India must be exercised only in exceptional and appropriate cases. The learned trial Judge, upon considering the pleadings and the nature of the document, arrived at a specific finding that the document is for adjudication of the suit. It cannot be said that the learned court exercised jurisdiction beyond what was vested upon him by law. The decision of the Hon'ble Apex Court in ***Shubhkaran Singh*** (supra) is on the scope of Order 18 Rule 17 of the Code of Civil Procedure and the report recognizes that if circumstances warrant, an opportunity to a party to recall a witness for examining, cross-examining or re-examining, can be granted by a court in exercise of its inherent

jurisdiction under Section 151 of the Code of Civil Procedure. (Paragraph 10 of the report).

10. Under such circumstances, the revisional application is disposed of without any interference with the order impugned. The opposite party will be at liberty to produce the notice issued by the Chairman, North Barrackpore Municipality dated April 23, 2015 by recalling the P.W.1. The petitioner will have a right of cross-examination. This exercise will not be construed as acceptance of the evidentiary value of the said document. Such issue shall be decided by the court in the trial. Whether the document is extraneous to the issues to be decided by the learned court is also left open, to be decided by the learned trial Judge. However, this Court is of the view that the petitioner should be compensated with cost for the delay.
11. Under such circumstances, cost of Rs.20,000/-shall be paid to the petitioner by the defendant no.1 within three weeks from date. Upon the court satisfying itself that the cost has been paid, the document shall be allowed to be brought on record upon recall of P.W.1. In case the cost is not paid, the suit will proceed without the same.
12. Accordingly, the revisional application is disposed of.

13. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)