

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Md. Shabbar Rashidi

CO 4600 of 2006

**Chabi Roy & Anr.
Versus
Amulya Das & Ors.**

For the petitioners : Mr. Gopal Chandra Ghosh, Sr. Adv
Ms. Suravi Ghosh
Ms. Parnashree Samanta

Heard on : 08.05.2026

Judgment on : 08.05.2026

Md. Shabbar Rashidi, J :

1. Affidavit-of-service filed on behalf of the petitioner today in Court be kept with the record. In spite of service none appears on behalf of the opposite parties.
2. This revisional application has been filed challenging the order dated September 12, 2005 and September 26, 2006.
3. By order dated September 12, 2005 an application was filed on behalf of the plaintiff in the suit to defer the cross-examination of P.W.2.
4. Upon consideration of the materials on record and in view of the fact that P.W. 2 could not be produced for his cross-examination, such application was disposed of in consideration of the fact that the

plaintiff was not in a position to bring P.W. 2 for his cross-examination by the defendants. On such consideration, the learned Trial Court recorded closing of evidence on behalf of the plaintiff and fixed the suit for evidence on behalf of the defendants.

5. The predecessor-in-interest of the present petitioner, namely, Nagar Chandra Roy filed a suit being Title Suit No. 336 of 1993 against the opposite party together with one Prafulla Chandra Roy for declaration of his tenancy rights in respect of one room on the southern side with partly covered veranda along with bath of privy with other common amenities on the first floor of premises No. 176/3, Bipin Behari Ganguly Street, P.S.- Muchipara, Kolkata- 700012 at a monthly rental of Rs. 10/- payable to English Calendar month since 1961. The tenancy sought to be declared in the suit was under Late Prafulla Chandra Roy.

6. According to the case made out in the plaint, defendant No. 4 Prafulla Chandra Roy took the lease of premises No. 176/3, Bipin Behari Ganguly Street, P.S.- Muchipara, Kolkata- 700012 from one Raichand Dey who was the owner of the property. The lease was valid for a period of 35 years expiring in the year 1995 upon certain terms and conditions. According to the terms and conditions of the lease, Late Prafulla Chandra Roy was permitted to induct sub-tenants in respect of the premises leased out to him. In accordance with such terms and conditions, Prafulla Chandra Roy inducted several tenants in the said premises including Nagar Chandra Roy i.e. predecessor-in-

interest of the present petitioners in respect of a portion of the property as mentioned above. During his lifetime, Prafulla Chandra Roy used to realize rent from the tenants including the predecessor-in-interest of the present petitioners and used to issue due rent receipts.

7. In 1993, the predecessor-in-interest of the petitioners came to know that the heirs of Raichand Dey, the erstwhile owner of the premises transferred the premises in favour of the opposite party herein. According to the case made out by the petitioner, the opposite parties, on the basis of a degree passed against Prafulla Chandra Roy intended to evict the predecessor-in-interest of the petitioners from his lawful tenancy under the said Prafulla Chandra Roy. In such backdrop, the predecessor-in-interest of the petitioners filed a suit for declaration that he was a tenant in respect of the premises mentioned in the schedule of the plaint under the opposite parties with a further declaration that the opposite parties had no right to evict the predecessor-in-interest of the petitioners from the said premises without due course of law. It was also urged that the decree passed in Title Suit No. 95 of 1971 against Late Prafulla Chandra Roy was not binding upon the predecessor-in-interest of the petitioners. The plaintiff also prayed for ancillary reliefs in the form of permanent injunction.

8. The predecessor-in-interest of the petitioners filed an application for temporary injunction in the said suit. An interim order of

injunction was passed which was subsequently made absolute upon appearance of the defendants/opposite parties. The suit was contested by the opposite parties by filing written statement. It was the contention of the opposite parties that the decree passed in Title Suit No. 95 of 1971 against Prafulla Chandra Roy, the lessee, was binding upon the predecessor-in-interest of the opposite parties and he had no right to occupy any portion of the suit properties.

9. The original plaintiff i.e. Nagar Chandra Roy died leaving behind the present petitioners as his legal heirs and they have been pursuing the Title Suit No. 336 of 1993 upon the death of their predecessor-in-interest.

10. In the course of hearing of the suit, the petitioner no. 1 was examined as P.W. 1. He was cross-examined and discharged. Affidavit-in-chief of P.W. 2, one Mr. K.D. Mukherjee, an advocate and neighbour of the petitioner, was filed. However, due to his serious illness, P.W. 2 could not appear before the Court on the date fixed for his cross-examination. Adjournments were sought on the ground of illness of P.W. 2, however, evidence on behalf of the petitioner was by an order dated September 12, 2005. Later on, the opposite parties/defendants filed an application for appointment of a handwriting expert to examine the signature of Prafulla Chandra Roy on the rent receipt granted in favour of the petitioners which were filed on behalf of the petitioners and were marked as exhibits. Such application on behalf of the opposite parties/defendants was rejected.

Thereafter, the opposite parties filed another application seeking cross-examination of P.W. 1 on recall with respect to the rent receipts issued by Late Prafulla Chandra Roy. The petitioners/plaintiffs contested the said application filed on behalf of the opposite parties/defendants. However, by the impugned order, the petition stood allowed by learned Trial Court.

11. By order dated September 26, 2006 an application was filed on behalf of the defendant to cross-examine P.W. 1 on recall. Such application was allowed by the learned Trial Court by the impugned order.

12. The impugned order noted the proposed questions to be put to P.W.1 on his cross-examination on recall.

13. It is submitted by learned Advocate for the petitioner/plaintiff that by allowing the cross-examination of P.W. 1 on recall, the defendants sought to introduce additional evidence. He referred to the notice in the impugned order to the effect that at the time of cross-examination of P.W. 1 a suggestion was confronted to such witness to the effect that rent bills concerned were manufactured and also that the said Prafulla Chandra Roy never signed in Bengali. However, later on it transpired that the said Prafulla Chandra Roy used to issue rent receipts in Bengali as well. So far as the proposed questions to be confronted to P.W. 1 in his cross-examination by the defendant on recall is concerned the impugned order has noted the aforesaid four questions which are as follows:-

“1. Did you file any rent receipt signed by Prafulla Chandra Roy in English ?

2. If it's not so, would you now file such rent receipts before this Ld. Court ?

3. How are you related with Prafulla Chandra Roy ?

4. Have you any document to show such relationship with Prafulla Chandra Roy ?”

14. Learned Advocate for the petitioner refers to question no. 2 to submit that by such question proposed to be put to P.W. 1 at his cross-examination, the defendants in the suit reiterated from cross-examination of P.W.1 in itself suggesting that the rent bills filed on behalf of the plaintiffs were manufactured. It was also suggested in the cross-examination that the Prafulla Chandra Roy never signed in Bengali. It was in aid of such cross-examination that the defendant, by the impugned order, was allowed to cross-examine the witness which would amount to introduction of new documents.

15. As noted above at the time of hearing learned Advocate for the petitioner/plaintiff submitted that he has served upon the defendant/opposite parties time and again but the defendants failed to appear in the present proceedings. Learned Advocate for the petitioner also submitted that the defendant/opposite parties have also not been taking any steps in the original title suit before the learned Trial Court and a suit has been fixed for ex-parte hearing.

16. So far as the proposed questions to be put in cross-examination of P.W. 1 on recall are concerned, it appears that P.W. 1 was also cross-examined on behalf of defendant extensively. The questions noted by the learned Trial Court goes to show that P.W. 1 was already cross-examined earlier on such facts and further cross-examination of P.W. 1 on recall was not at all required.

17. From the impugned order it also transpires that the learned Trial Court allowed the application of the defendant for cross-examining P.W. 1 on recall in consideration of the fact that it will not prejudice the case of the plaintiffs.

18. With respect not causing any prejudice to the case of the plaintiffs is not the sole consideration for allowing an application for recall of the witnesses already examined. One has to establish that such cross-examination is actually envitable for the purpose of proper adjudication of the disputes involved in the suit.

19. In the aforesaid circumstances the instant revisional application is allowed.

20. The impugned order dated 26th September, 2006 is hereby set aside.

21. So far as the impugned order dated September 12, 2005 is concerned, it is submitted by the learned Advocate for the petitioner that the issue involved in such order has become infructuous and no further order need be passed in this respect.

22. With the aforesaid observations C.O 4600 of 2006 stands disposed of.

23. No order as to costs.

24. Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Md. Shabbar Rashidi, J.)

Rohit
A.R. (Court)