

CO. 4275 of 2025

11.06.26
D/L
SI-09
Ct. 06
(Samar)

Sri Mahasankha Dutta
Vs.
Sri Banibrata Dutta & Ors.

Mr. Anindya Lahiri, Sr. Adv.,
Mr. Anish Chakraborty.
... for the petitioner.

Ms. Sudeshna Basu Thakur,
....for the opposite parties.

1. This revisional application lays challenge to an order dated November 21, 2025 passed by the learned Civil Judge (Senior Division) 8th Court at Alipore, South 24 Parganas in Title Suit No. 14650 of 2012 whereby the petitioner's application for adjournment has been rejected and the petitioner's opportunity to further cross-examine the advocate commissioner (Partition Commissioner) has been closed.
2. Title Suit No. 14650 of 2012 has been instituted by the petitioner praying for partition of the property in suit. In the said suit, upon passing of the preliminary decree, a Partition Commissioner was appointed who has surveyed the suit property and filed a report.
3. The Partition Commissioner was being cross-examined by the petitioner. On September 02, 2025 when the case was fixed for further cross-examination of the Partition Commissioner, an

application for adjournment *inter alia* on the ground of the illness of the petitioner was filed however, such application was not moved. In such view of the matter, the learned Trial Court rejected the said application for amendment and closed the opportunity of further cross-examination of the Partition Commissioner.

4. The petitioner thereafter filed an application seeking recall of the order dated September 02, 2025. Such application was rejected by the order dated November 21, 2025. Feeling aggrieved thereby, the petitioner has approached this Court by filing the present revisional application.
5. Mr. Lahiri, learned senior advocate appearing for the petitioner submits that although challenge to the order dated September 02, 2025 has not been incorporated in the prayer portion of the present revisional application yet, since the order dated November 21, 2025 whereby recall of the order dated September 02, 2025 was refused, has been challenged and a copy of the order dated September 02, 2025 is there on record, therefore this Court may treat the order dated September 02, 2025 as also being challenged.
6. He submits that it will be evident from the order dated September 02, 2025 itself that an application for adjournment had been filed *inter alia* on the ground of the illness of the petitioner.

7. It is further submitted that along with the application for adjournment a medical certificate was also annexed to demonstrate the petitioners' illness and as such, even if, the said application was not moved, the learned Trial Court was not powerless to adjourn the matter at least for once.
8. He further submits that in any case upon appropriate cause being shown for non appearance on September 02, 2025 the order dated November 21, 2025 should not have been passed by the learned Trial Court and the petitioner's application seeking recall of the earlier order dated September 02, 2025 should have been allowed.
9. Ms. Basu Thakur, learned advocate appearing for the opposite parties submits that both the orders i.e. the order dated September 02, 2025 and the order dated November 21, 2025 have been correctly passed. She further submits that it will be evident from record that the petitioner has already cross-examined the Partition Commissioner on two occasions and as such, there is no need for any further cross-examination.
10. Heard learned advocates appearing for the respective parties and considered the material on record.
11. It is evident from the order dated September 02, 2025 that the said date was fixed for further cross-examination of the Partition Commissioner.

On the said date a petition for adjournment had been filed *inter alia* on the ground of illness of the petitioner. Such application was rejected by the learned Trial Court since the same was not moved.

12. Although the petition also indicates the busyness of the learned Advocate who was supposed to represent the petitioner on the said date in the application, however, since busyness of advocate cannot be cited as ground for adjournment in terms of the provisions of the Code of Civil Procedure, 1908, therefore the said ground is not considered as a valid ground. However, even then when there was another ground of the plaintiff's illness in the application for adjournment, the opportunity of the petitioner to further cross-examine the Partition Commissioner should not have been immediately closed.

13. On November 21, 2025 when the application for recalling was moved, the learned Trial Court was apprised of the grounds as to why the said petition could not be moved on the earlier date.

14. Although the learned Trial Court cannot be set to be absolutely unjustified in rejecting the petitioner's application on September 02, 2025 since the same was not moved, yet, for ends justice when a date had been fixed for further cross-examination and on the preceding date no prayer for adjournment had been made, the learned Court

could have fixed a next date asking the petitioner to show cause as to why further cross-examination would not be closed especially keeping in view that the suit is one for partition.

15. Since, adduction of evidence (which includes cross-examination of witnesses) forms the core of the fair trial procedure followed by the judicial system, therefore this Court is inclined to grant one more opportunity to the petitioner to conclude the cross-examination of the Partition Commissioner subject to payment of costs.

16. This Court is informed that August 05, 2026 is the next date fixed before the learned Trial Court. On the said date if the Partition Commissioner is available the learned Trial Court shall allow the petitioner to cross-examine the Partition Commissioner. Such cross-examination shall be concluded within two dates i.e. if the first cross-examination is done on August 05, 2026 the petitioner will get one more date for completing the cross-examination.

17. In case the learned Partition Commissioner is not available on August 05, 2026, the learned Trial Court shall fix an appropriate date for further cross-examination of the Partition Commissioner such that it is concluded within two dates as already indicated herein above.

18. On August 05, 2026 the petitioner shall

deposit in Court costs assessed of Rs. 5,000/-. The defendants i.e. the opposite parties herein shall be entitled to withdraw such costs upon deposit being made by the petitioner. The orders dated September 02, 2025 and November 21, 2025 stand set aside. It is clarified that if costs are not paid by the petitioner on the date fixed, this order shall have no effect.

19. The learned Trial Court is also requested to conclude the hearing of the suit as expeditiously as the business of the learned Trial Court would permit.

20. With the above observations, CO. 4275 of 2025 stands disposed of. There shall be no order as to costs.

21. 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.)