

MC 35/2016
(Arising out of L.A. 06/2015)
CIS WBHG01-003921-2016

Order no.65
17.02.2025

Today is fixed for hearing of the petitions. Heard both sides present considered.

The learned Advocate for the petitioner moving the petition for marking 'Ekdin' newspaper submits that this is part of the affidavit-in-chief of PW-1 (now dead) dated 12.04.2016. Due to oversight, the said paper publication remained unexhibited on their side. There has been no act of malafide on their behalf. PW-1 was examined, cross examined in full and then discharged. My attention is drawn to the order no.33 dated 03.03.2016 passed by this Court. He urged for proving it by another PW in this regard.

The learned Advocate appearing for the opposite party per contra argued that both the petitions should be rejected in limini. The said paper publication cannot be marked exhibit at this state on behalf of PW-1 because he has expired. In the said paper publication, there is no description of the property in question as per this Will. Moreover, at argument stage, question of proving the newspaper by further PW does not arise. For the argument sake, if the said paper publication is going to be exhibited, the opposite side shall get prejudiced because they will not get the opportunity to cross examine PW-1 who is already expired. Therefore, both the petitions be rejected ex facie.

Fact remains that after passing series of orders, the approval is granted to publish the notice in the daily newspaper and on that basis, the petitioner filed the newspaper publication on 03.03.2016. There is no dispute that it is part of the affidavit-in-chief of PW-1. The petitioner acted without any malafide observing all necessary formalities and then filed the said publication. This non-marking is due to oversight because it was already filed with record before PW-1 evidence started on 02.07.2016. Another petition for adducing further evidence however cannot be considered at argument stage without appropriate reason and basis and so, it cannot be permitted.

The newspaper publication should be marked exhibit subject to objection and the necessary order is as hereunder.

Accordingly, **Ordered** that the 'Ekdin' newspaper publication is hereby marked exhibit on behalf of the petitioner as **Exbt.4** Dealing clerk to include in the exhibit list.

The petition for marking the newspaper thus disposed of. Another petition for adducing further evidence is hereby considered and **rejected on contest**.

Both the petitions are thus disposed of.

To **19.03.2025** for Argument. Both sides must be present on the date fixed.

Typed by me.

Addl. District Judge, 1st Court,
Hooghly Sadar.