

**Order dated 10.01.2025**

Today is fixed for passing order in respect of petition under Order 1 Rule 10(2) of C.P.C dated 14.07.2023. The petitioner, who intends to be impleaded as necessary party, files hazira.

The original petitioner files hazira along with a petition supported by an affidavit.

Before taking up the record for passing order, the attention of this court had been drawn by Ld. Advocate for the original petitioner with regard to practicing fraud upon the court as well as the original petitioner by the present petitioner as copy of petition, which was intended to be moved before the court as well as intended date of pressing the put up petition ,are totally different from what was actually moved before the court on 07.01.2025 i.e. the date on which put up petition was filed and petition under Order 1 Rule 10(2) was heard by the court.

It was argued before this court that a copy of application for attachment of suit property before judgment was delivered to the original petitioner via post showing it to be moved on 08.01.2025. And the Ld. Advocate for the petitioner, intending to be impleaded as necessary party, put up the record on 07.01.2025 with designed motive and moved the petition under Order 1 Rule 10(2) of C.P.C claiming the copy of the same duly been delivered to the original petitioner and the court, having immense faith on Ld. Advocate and accepting his submission with regard to due delivery of petition in question via post as gospel truth, fully heard the petition under consideration on 07.01.2025 by providing time to the original petitioner till 1.15 p.m. and also considering her failure to place forward rival contention against the petition under consideration despite such golden opportunity.

The Ld. Advocate for the present petitioner, who is intending to be impleaded as necessary party, denied each and every contention put forward by Ld. Advocate for the original petitioner but failed to give satisfactory explanation with regard to service of copy of application for attachment of suit property before judgment at a time when, in strict sense, he has not been impleaded as necessary party.

However, the Ld. Advocate for the present petitioner contended that he had annexed the copy of put up petition along with the petition for attachment of suit property before judgment by incorporating the date of hearing on 07.01.2025.

But no copy of petition showing intended date of moving of the petition on 07.01.2025 has been filed by Ld. Advocate for the present petitioner.

On the flip side, the Ld. Advocate for the original petitioner files a copy of petition for attachment of property before judgment with an endorsement “ Put up moved on 08.01.2025”

The serious legal question arises with regard to the authority of present petitioner to serve the copy of application for attachment of suit property before judgment to the original petitioner when he was not impleaded as necessary party. Precisely, he is not impleaded as necessary party even today as no effective order in respect of petition under Order 1 Rule 10(2) CPC has been disposed of affirming his right to contest.

The question of sending the subsequent copy of application for attachment of property before judgment with endorsement” moved on 01.02.2025” by present petitioner does not arise at all as the present petitioner has not yet been impleaded as necessary party.

At the midst of hearing, the Ld. Advocate for the present petitioner

prayed for rescheduling the date for rehearing the petition under Order 1 Rule 10(2) of CPC and contended that by doing so the interest of both parties would be protected and parties shall get equal opportunity to place forward their respective contentions in proper manner.

Its no brainer that one party is alleging practice of fraud and the other party, denying the allegation. The court, at this stage, is not in a position to verify the contents of postal articles which were actually delivered to the original petitioner.

The allegation and counter allegation are to be considered or brushed aside on the basis of concrete finding which is feasible only when there are convincing materials on record.

The court, as symbol of justice and impartiality, should focus on prompt and proper dispensation of justice rather than to be distracted by irrelevant issue.

The important issue at this juncture would be providing opportunity of being heard to the original petitioner in respect of petition under Order 1 Rule 10(2) CPC rather than to conduct inquiry to find out which party is at fault .

Having regard to present fact and circumstance and also giving thoughtful consideration regarding submission of Ld. Advocates for respective parties, I am of the considered view that no prejudice would be caused to present petitioner if opportunity of being heard is provided to the original petitioner to put forward her rival contention against the petition under Order 1 Rule 10(2) CPC.

Consequence thereof, Pasing of effective order in respect of petition under Order 1 Rule 10(2) CPC is kept in abeyance till hearing of petition under consideration afresh.

Fix **01.02.2025** for hearing of petition under Order 1 Rule 10(2)

**O.S. 22 of 2024**

CPC afresh.

The Ld. Advocates for respective parties are directed to get ready for hearing the petition afresh on the scheduled date.

The petition filed by the original petitioner supported by affidavit and annexure be kept with the record.

D/C by me

Additional Sessions Judge  
2<sup>nd</sup> Court, Barasat, North 24-Pgs.

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2<sup>nd</sup> Court,. Barasat,  
North 24-Parganas.