

EJECTMENT SUIT NO. 40 OF 2021  
C. N. R. NO. WBPS01-000074-2021  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 22 DATED 24.03.2025

Plaintiff files hazira.

Defendant files one written objection against the petitions under Sec.151 of C.P.C. filed by the plaintiff. Copy served. Let it be kept with the record.

Today is fixed for hearing of the petitions under Sec.151 of C.P.C. dated 27.01.2025 filed by the plaintiff.

Ld. Advocates for both sides are present.

The record is taken up for hearing of both the petitions.

Heard ld. Advocates for both sides.

By filing the petition under Sec.151 of C.P.C., it is submitted by the ld. Advocate for the plaintiff that on 06.11.2024, date was fixed for cross examination of P.W.1. Cross examination of P.W.1 was closed on that day and 07.02.2025 was fixed for evidence in chief of D.W.1. Plaintiff submitted that it wants to adduce further witness on behalf of the plaintiff but unfortunately it was not recorded in the order sheet and as such, plaintiff wants to recall the said order to get an opportunity to produce the witness as P.W.2.

By filing written objection, it is submitted by the ld. Advocate for the defendant that as there is a specific provision, the instant petition under Sec.151 of C.P.C. filed by the plaintiff is not appropriate provision and not maintainable of law. On 06.11.2024, evidence of the plaintiff was closed and 07.02.2025 was fixed for evidence of the defendant. It is further submitted by the ld. Advocate for the defendant that no name of P.W.2 has been mentioned and as such, the instant petition should be rejected with exemplary cost for harassing the defendant.

On perusal of the petition, written objection, the materials on record and the submissions of ld. Advocates, it transpires that on 06.11.2024, on the prayer of ld. Advocate for the plaintiff, evidence of the plaintiff was closed and next date was fixed for evidence of D.W. It further appears from the record that though today is fixed for evidence of D.W. but no examination in chief on affidavit of any witness on behalf of defendant has been filed. Moreover, the written objection filed by the defendant today is though verified but not supported by an affidavit. The instant suit has been filed on ground of subletting seeking eviction against the defendant. Now, to establish the said ground, plaintiff intends to adduce further evidence. It is the right of the plaintiff to adduce evidence to prove his case and discharge his onus probandi. For ends of justice, plaintiff should be given an opportunity to adduce further evidence, if any and accordingly, the instant petition under Sec.151 of C.P.C. filed by the plaintiff should be allowed.

ORDER NO. 22 contd.

Hence, it is

**ORDERED**

that the petition under Sec.151 of C.P.C. is allowed on contest.

Plaintiff is permitted to adduce further evidence, if any, according to law.

Now, the record is taken up for hearing another petition filed by the plaintiff on 27.01.2025.

Heard ld. Advocates for both sides.

Perused the petition and the materials on record.

By filing the instant petition, it is submitted by the ld. Advocate for the plaintiff that the instant suit has been filed on the ground of default and subletting. It is further submitted that the defendant has sublet the suit premises to Sk. Faruk Hossain and Sk. Saifuddin without written permission or consent from the plaintiff. On 31.01.2019, one leave and licence agreement was made in between Shyam Sundar Belel, husband of Jamuna Belel as Licensor and Sk. Faruk Lhossain and Sk. Saifuddin as licensee in respect of shop room no.56 on the ground floor of premises no.49/1, J. N. Banerjee Road, P.S. Taltolla, Kolkata-700014. That at the time of evidence of P.W.1, though one document has been filed but the same has not been exhibited and to prove the signature of Faruk Hossain, it is necessary to produce him as witness and prays for a direction upon the department to issue summons to witness upon Faruk Hossain directly by hand at the risk of the party.

Considering the petition, materials on record and the submission of ld. Advocates, it appears that during the evidence of P.W.1 on 09.08.2023, one xerox copy of agreement dated 21.01.2019 executed between Shyam Sundar Belel and Sk. Farooq Hossain has been filed and marked as 'X' for identification. I am of opinion that unless and until the said agreement is marked as Exhibit, the same cannot be taken into consideration and for proper and effective adjudication of the instant suit, the said document should be marked as Exhibit. Accordingly, the instant petition filed by the plaintiff should be allowed.

Hence, it is

**ORDERED**

that the petition dated 27.01.2025 filed by the plaintiff is allowed on contest.

Issue summons to witness upon Faruk Hossain directly by hand at the risk of the party.

Fix 22.05.2025 for evidence of P.W.2.

Dictated and corrected by me,

JUDGE

JUDGE  
[5TH BENCH]