

Ej. Suit No. 119 of 2022
CIS No. WBPS01-000183-2022

Order No. 60
03.09.2025

Today is fixed for DW.

Both parties are present by filing hazira through their respective Ld. Advocates.

Application has been filed by the Ld. Advocate for the proforma defendant no. 1 submitting that the proforma defendant namely Amit Kumar Roy expired on 30.08.2025.

Plaintiff is directed to take step in respect of the death of the proforma defendant no. 1.

Defendant no. 1 has filed another petition for recall of the order dated 14.03.2024 and thereby grant leave to the defendant to press application u/s 7(1) & 7(2) of the WBPT Act, 1997.

Defendant has filed another petition praying before the Court for recall of the order dated 16.07.2025 and grant an opportunity to cross examine the PW -1.

Copy has been served.

Heard both sides.

Perused.

Considered.

It appears that the defendant had not pressed his application u/s 7(1) & 7(2) of the Act and later vide order no. 30, dated 07.08.2024, his defence has already been struck off. The defendant thereafter tried to get that order recalled which was rejected and he also tried to file fresh application u/s 7(1) & 7(2) of the Act accompanied by application under Section 5 of the Limitation Act which has also been rejected and this is another futile attempt on behalf of the defendant to delay the proceeding of the suit. Accordingly, the petition is rejected as devoid of merit.

It further appears that on 27.01.2025 the PW-1 had been partly cross-examined and thereafter after giving several opportunity to the defendant to cross examine the PW-1 the cross-examination of PW-1 was closed vide order no. 58, dated 16.07.2025.

It is a general rule that evidence should not be shut out, provided it can be done without causing prejudice to the other side. In the present case, there is no denying that the defendant has been seeking adjournments on one pretext or another but at the same time, it is also to be borne in mind that the dispute should be adjudicated on merits rather than on technical default ground.

Hence, in the interest of justice the petition is hereby allowed subject to payment of cost of Rs. 3,000/- (three thousand only) to be paid to the Plaintiff by the defendant.

The order dated 16.07.2025 is hereby recalled.

Fixing 10.11.2025 for cross examination of PW1.

Dictated and corrected by me:

Judge

Glady Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta