

Ej. Suit No. 307 of 2014
CNR No. WBPS01-000474-2014

Order No. : 59
dated 27.06.2024

Today is fixed for hearing of the petition dated 10.06.2024 filed by the plaintiff seeking recall of PW-1 on the grounds stated therein.

Both parties filed their hazira through their Ld. Advocates.

Written objection has been filed on behalf of the defendant today before this Court.

Now the petition dated 10.06.2024 filed by the plaintiff under Order-18, rule-17 of CPC seeking recall of PW-1 is taken up for hearing in presence of both sides.

Heard the Ld. Advocates with regard to the above application at length.

Now the record is taken up for passing order.

In the captioned application, it has been specifically stated by the plaintiff that the instant suit has been filed by the plaintiff seeking eviction of the defendant on several grounds as available u/s 6 of the WBPT Act, 1997 including the ground of reasonable requirement of the suit premises by the plaintiffs and their family members and evidence of PW-1 has already been recorded and he has been discharged. However, the plaintiff while deposing as PW-1 could not produce few documents in the form of Aadhar Card of plaintiff no. 1(d), birth certificate of daughter of plaintiff no. 1(a) and the Blue Book of the four wheelers of the plaintiffs as the same were not in custody of the plaintiffs at the relevant point of time and the plaintiff desires to file the above documents for the purpose of establishing the ground of reasonable requirement by showing composition of his family members and the basis of their respective needs. Hence, the application u/O-18, Rule-17 of CPC seeking recall of PW-1 to file the above documents.

Strongly opposing the submission made by the Ld. Advocate for the plaintiff, it has been submitted by the Ld. Advocate for the defendant that the application seeking recall of PW-1 is nothing but an attempt to fill-up the lacuna in the evidence of PW-1 after his cross examination been completed. Moreover, the instant suit has already reached the stage of DW after closure of evidence of PW and recalling of PW-1 is not permissible at this stage. He argued that the defendant had prior knowledge about the documents which PW-1 desires to produce before this Court on recall. Accordingly, he has prayed rejection of the above application.

I have already heard both sides at length. Perused the plaint and the written statement, the deposition of the witness as PW-1.

As per **Order -18, Rule-17 of CPC** Court may recall and examine witness. —The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Therefore, from the bare reading of the above provision it becomes clear that the above provision is very wide and can be made **at any stage** to enable the Court to do complete justice between the parties. This being so, the submission made by the Ld. Advocate for the defendant to the effect that an application under Order-18, Rule-17 of CPC is not maintainable at the stage of argument does not sound appealing to me as the provision itself provides that a witness may be recalled by the Court at any stage of the proceeding.

However, it is at the same time necessary that recalling of the witness is meant for the purpose of aiding the Court to arrive at just conclusion and not meant for the purpose delaying the proceeding of the case without serving the basic purpose of effective adjudication. Moreover, Court can recall of witness not only on the application made by a party but also on its own if the same is required for effective adjudication (AIR 1999 HP 72 and AIR 1982 P&H 157 relied upon).

But, it is equally true that application for recall of witness should not be allowed where such application has been made just to fill-up the lacuna of the case of the party recalling such witness which has been elicited during cross examination and discretion u/O-18, rule-17 of CPC should be exercised by the Court sparingly as the power is absolutely discretionary and needs to be exercised with greatest care and only in exceptional circumstances (**AIR 1999 ALL 14** relied upon).

Now let us see, whether the evidence sought to be adduced by PW-1 on his recall is necessary for proper adjudication or not.

This is suit for eviction of tenant under the provision of WBPT Act, 1997, wherein the ground of reasonable requirement has been specifically pleaded by the plaintiffs for themselves and their family members. Naturally, the plaintiff is duty bound to prove the composition of their family and also prove their respective need and the documents sought to be produced by PW-1 on recall are necessary to prove the said ground in the opinion of this Court.

Therefore, the above materials clearly suggests that the plaintiff is not introducing any new fact by way of recall of PW-1 but only desires to elaborate the existing facts.

In this Context, it is also important to mention here that the provision of order-18, Rule-17 of CPC is intended to enable the Court to clarify any doubts which may have with regard to evidence laid by the parties. The discretion under the above provision is wide and such discretion is to be used exercised by the Court to achieve the purpose of effective adjudication.

The Hon'ble Apex Court as well as the Hon'ble Calcutta High Court has been of consistent view that recalling of witness is never intended to be used to fill-up the omission in the evidence of a witness who has already been examined and it is purely a discretion of the Court which should never be exercised considering the ground that prejudice will not be caused to the other side and the Court can only allow such application for recall of a witness after his examination-in-chief and cross-examination is over when such evidence is required to enable the Court to clarify any doubts that may have arisen during the evidence of said witness. The above principle has been clearly enumerated in the decisions of the Hon'ble Calcutta High Court reported in **2013 (4) SCC 1, 2016 SCC Online Cal 3653, 2016 SCC Online Cal 7270, 2017 SCC Online Cal 745 and 2019 SCC Online Cal 745.**

However, it is equally true that when a piece of evidence either oral or documentary which sought to be produced by the party recalling of witness would either assist the Court in clarifying the evidence led on the issues or lead to a just and effective adjudication, the Court must exercise the discretion under Order-18, Rule-17 of CPC or u/s 151 of CPC and in such a case the ground that such application was filed at a belated stage should not come in the way of advancing substantial justice to the parties aiming towards effective adjudication of the matter in dispute. On this point, reliance can be placed on the decision of the **Hon'ble Apex Court** in the case of **K.K. Velusamy -vs- N. Palanisamy** reported in **2011 (11) SCC 275** and in the case of **Vadiraj Naggappa Vernekar (Dead) through Lrs. -vs- Shardchandra Prabhakar Gogete** reported in **and 2009 (4) SCC 410.**

Borrowing wisdom from the above decisions if we consider the fact and circumstances of the present case which has necessitated the filing of the application dated 10.06.2024 it is noticed that the evidence sought to be brought by way of recalling PW-1 are not relating to any new facts but they have nexus with the pleading of the plaintiff. As such, in my considered view those documents are necessary for effective adjudication of the suit. Moreover, the defendant would not be prejudiced if those documents are being allowed in evidence, obviously in accordance with the law of evidence, as the defendant will get ample opportunity to cross examine the witness with regard to those facts, if they desire so.

Moreover, in the event of dispensation of justice, as we found from the plethora of decisions of various Legal Authorities, whole approach of the Court should be pragmatic and not too rigid and dogmatic.

At the same time it is true that the plaintiff had every opportunity to file the above documents at the time of evidence of PW-1 and the defendant in my opinion should sufficiently compensated in terms of money for being subjected to delay by the inaction on the part of the plaintiff.

Hence, it is,

ORDERED

That the application on dated 10.06.2024 is allowed on contest, but subject to payment of costs of Rs. 1000/- (C.P.) to be paid to the defendant by the plaintiff on the next date positively.

Let the PW-1 be permitted to come on the witness-box, once again to produce the document specified in the petition captioned above in accordance with law.

To **23.07.2024** for

- i) evidence of PW1 on recall.
- ii) filing receipt showing the payment of costs of Rs. 1000/-.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
***Presidency Small Cause Court,
Calcutta.***