

Misc. Case No. 241 of 2018  
CIS No. : WBPS01-001089-2018

Order No. 92  
06.01.2026

Today is fixed for hearing of the application filed by the petitioner for recall of the OPW-2.

Parties are present by filing their respective haziras.

Parties are heard in respect of the application as above.

Heard. Perused. Considered.

It appears that the petitioner/judgment debtor has filed the instant application submitting that on 10.06.2024 when the OPW-2 Pradip Kumar Sur was cross-examined he deposed that he has not brought any identity document neither any document to show that the issuers of exhibit-C are the original Shebait of the decree holder trust estate. It is submitted that the exhibit-C seems suspicious and the signature the witness seems to be different and, as such, a question arises as to the identity of Pradip Kumar Sur. Further, no document was filed to show that Gopal Saha is the tenant in respect of the premises no. 44C, Sovabazar Street, thereby he intends to recall the OPW-2 and put him some more questions which he has mentioned in the petition.

The OP/decreed holder submitted that the petitioner/ judgment debtor has already preferred an appeal against the decree passed by this Court being Appeal No. 86 of 2017 which is pending before the Ld. Judge, 4<sup>th</sup> Bench, City Civil Court at Calcutta and this Court cannot set aside the decree passed by the decretal Court. It is further submitted that Pradip Kumar Sur being Senior Citizen could not show his identity card on 10.06.2024 as well as the *arpannama* relating to the decretal property executed in 1908. Pradip Kumar Sur was appointed the next person as Shebait to represent the Sri Sri Gopal Jew Thakur in the Court as per the Resolution dated 09.06.2024. It is further submitted that the judgment debtors/petitioner has no locus standi to put this question neither can challenge the title and ownership of the decretal property. Further, there is no iota of proof that they are the thika tenants in the decretal property, thus, prays for dismissal of the application.

Upon perusal of the entire record, it appears that an ejectment suit no. 33 of 2010 was filed by the decree holder wherein the judgment debtor though initially appeared to contest the suit, later chose not to contest hence the suit was decreed ex parte. Thereafter the decree holder put the decree in execution. In the meantime the judgment debtor filed the application under Section 47 of the CPC read with Order 21 Rule 99 to 101 of the CPC which was registered as the instant misc case. It has also come into light that the petitioner has also preferred an appeal against the decree passed ex parte.

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The OPW 2 has claimed himself to be one of the *shebait*s of the decree holder and has also filed the resolution dated 09.06.2024, marked as exhibit C, whereby he has been appointed to represent the decree holder in the present case. Just because the petitioner finds the signature of the O.P.W. 2 suspicious is not a ground for recall of the O.P.W.2. On the day of the cross examination, the witness could not produce the identity card when he was asked during cross examination but it does not necessarily, a must to produce such document when he is being identified by the conducting Ld. Advocate unless there is some serious issue regarding his identity and the court directs him to produce one. Further his identity as Prodip Kumar Sur was not challenged by the petitioner that day nor he brought any allegations of false identity before the court that day. The O.P. has annexed the copy of the Aadhar Card and PAN Card for perusal with the written objection. It is neither the case that he did not want to produce his identity card, it is only that he did not have the same in his possession on that relevant day.

Regarding the issue whether the petitioner can even maintain this case or not pending the appeal against the ex parte decree is the matter to be considered and decided at the final disposal of the case as evidence of the parties have already been closed.

In view of the above, the application filed by the petitioner for recall of the OPW-2 is hereby rejected on contest.

Fix **04.02.2026** for argument.

Dictated and corrected by me:

*Judge*

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