

Title Suit 05 of 2025 (Reg. 05 of 2025)
CNRWBSP07-003347-2025
J.O.Code No. WB01066

Order dtd. 13/01/2026.

Today is fixed for passing order in the matter of a petition under Order 18 Rule 16 CPC filed by the plaintiff.

One extension petition supported by affidavit is filed by the plaintiff with a prayer to extend ad interim injunction.

Perused the petition.

Upon considering that the circumstances behind issuing ad interim injunction remains unchanged, I do hereby allow the extension application.

The order of ad interim injunction is extended till next date.

Now the record is taken up for passing order of the petition dated 13/06/2025 under Order 18 Rule 16 CPC.

Perused the plaint, written statement, the application under order 18 Rule 16 CPC, written objection filed by defendant and copy of family settlement agreement (Panchnama).

The plaintiff in his application prays before the Court to call upon one Raj Bali Shaw immediately as a witness in the suit, who is allegedly a witness to the family settlement agreement on the ground that the intended witness is an aged and infirm person and is the only living attesting witness to the family settlement agreement. It is further contended that the other witness to the family settlement agreement had already expired and to prove the family settlement agreement evidence of Raj Bali Shaw is crucial.

It is submitted by Ld. Advocate for the plaintiff that Order 18 Rule 16 CPC sufficiently empowers the Court on application by either of the party to the suit, to call upon a witness at any time after institution of the suit and to take evidence of such witness if sufficient cause is shown to the satisfaction of the Court for taking evidence of that witness.

The plaintiff cited two judgments passed by the Hon'ble Supreme Court in Tek Bahadur Bhujil versus Debi Singh Bhujil (1966 AIR(SC) 292) and Thulasi dhara and Ano. versus Narayanappa and Ors. (2019) (3) RCR (Civil) 27) wherein the Hon'ble Apex Court decided the issue of necessity of registration of family agreement. In my considered opinion both the cited cases are not relevant in the present scenario as this Court is not dealing with

the question of registration of family settlement at this point of time under Order 18 Rule 16 CPC.

From the petition under Order 18 Rule 16 CPC it is transpired that the plaintiff intends to bring on record the witness of the alleged family settlement (Panchnama) and intends to prove the execution of said Panchnama which is a xerox certified copy that was produced in Title Suit no. 827 of 2017 decided by Ld. 2nd Civil Judge, Senior Division, Barasat.

As per contention of the plaintiff howfar the Court understand, the xerox copy of a document (family settlement) which was exhibited in another suit, is ought to have been exhibited in this suit in the same process.

Upon considering pleadings of the suit I do find that existence and execution of alleged Panchnama (family settlement) has been denied and disputed by defendant no. 2 in his written statement. Thus, the document in question is to be formally proved.

It is apparent to the Court that the plaintiff intends to brought on record the certified copy of Panchnama obtained from a xerox copy marked in another suit, at the instance of one of the alleged attesting witnesses who is not at all a party to the alleged family settlement.

It is the rule of evidence that the document shall be produced before the Court in evidence from the legal custodian of the document. Said Raj Bali Shaw is a third party to the alleged agreement. To bring an agreement to the judicial notice the document shall have to be produced first by the legal custodian. Then the role of attesting witness comes. It is clear to the Court that the plaintiff is intending to bypass the procedure of proving the agreement, herein the family settlement.

Order 18 Rule 16 CPC depicts that the Court may call upon any witness at the instance of either of the parties if it is satisfied with the sufficient cause for doing so. For argument sake even if the Court holds that the intended witness is an aged infirm person, even then he cannot be brought as a witness at the first instance at this stage, breaking sequence of proving an family settlement. It is the plaintiff or its representative who first appears on dock to bring the family settlement to judicial notice and after proving the things on his part in respect of that intended document to be proved, the question comes to call upon the attesting witness to prove the execution of the said document already brought to judicial notice.

Merely the ground that the attesting witness is an aged infirm person, does not allow the Court to bypass the standard procedure of proving a document ignoring the objection of defendants.

In the premise of above discussion, the Court is of considered opinion that the cause shown by plaintiff in his application under Order 18 Rule 16 CPC is not satisfactory to the Court as such practice will bypass the legal procedure of proving a family settlement and as the same will prejudice the interest of defendant.

As such, instant petition filed under Order 18 Rule 16 CPC by plaintiff on 13/06/2025 is hereby rejected on contest without costs.

Fixing 28.01.2026 for hearing of injunction application.

D/C by me,

Sd/-
Civil Judge (Sr. Divn.)
Small Causes Court, Sealdah

Sd/-
Civil Judge (Sr. Divn.),
Small Causes Court, Sealdah