

06.05.2026
Item No.7(DL)
Court No.06
AJ.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 1076 of 2026

**Pallabi Ghosal alias Pallabi Ghosal Mukherjee
-Vs-
Smt. Shyamali Das**

Ms. Tanmay Mukherjee,
Mr. Rudranil Das,
Ms. Swarnali Saha.
.....for the petitioner.

Mr. Biswajit Sau.
.....for the opposite party.

1. Affidavit of service filed in Court today is taken on record.

2. This revisional is directed against an order dated February 10, 2026 passed by the learned Civil Judge (Senior Division), 8th Court at Alipore, South 24-Parganas in Ejectment Suit No. 52 of 2017 whereby the petitioner's application for removal of the Advocate Commissioner appointed for the purpose of taking evidence on commission has been rejected.

3. Ejectment Suit No. 52 of 2017 has been instituted by the opposite party inter alia for eviction of the petitioner and for damages.

4. In the said suit, the opposite party's evidence was being taken on commission. It is the petitioner's case that on November 18, 2025 when evidence was being adduced on commission, a bunch of rent receipts were sought to be exhibited.

The Learned Advocate Commissioner recorded such fact in the minutes of the proceedings (commission work) but did not record anything that would indicate as to whether the rent receipts tendered by the defendant's witness who was being examined on commission, had been exhibited or not.

5. Aggrieved thereby, the petitioner filed an application for removal of the Advocate Commissioner which has been turned down by the order impugned. This application assails the said order dated February 10, 2026.

6. Mr. Mukherjee, learned Advocate appearing for the petitioner submits that once a document is tendered in evidence, the same is either marked as an exhibit, upon it being accepted as an exhibit or marked as 'X' for identification if there is doubt as regards its acceptability as exhibit.

7. He further submits that in the present case although the minutes record that rent receipts were tendered, there is no indication as to whether the same were marked exhibits or were marked X for identification. He refers to the minutes of the proceedings conducted on November 11, 2025 and submits that the usual practice followed in taking evidence on commission is to record the minutes of the proceedings at one place and the deposition (which would include marking of exhibits upon documents tendered being accepted as exhibits) on

a separate sheet of paper. Inviting the attention of this Court to the minutes of the proceedings prepared on November 18, 2025 he submits that on the said date no deposition was recorded although the minutes itself would reveal that rent receipts were tendered. He further submits that if a document is not accepted as an exhibit a litigant would be entitled to take appropriate steps to ensure the marking thereof as exhibit but for that purpose, it would be important for the litigant to know as to whether the document tendered by the witness during examination has been marked as exhibit or not.

8. It is further submitted by Mr. Mukherjee that the learned Trial Court has not addressed the petitioner's real contention while passing the impugned order inasmuch as, the prayer for removal of the Advocate Commissioner was only sought for on the ground that the proceedings had not been conducted properly on November 18, 2025. He further submits that certain observations have been made in the order impugned against the learned Advocate representing the petitioner before the learned Trial Court which would affect her adversely and he prays for deletion thereof.

9. Learned Advocate appearing for the opposite party submits that the opposite party/plaintiff is a ninety years old lady and the petitioner is not a

tenant in respect of the property in question. He further submits that although by the order dated July 30, 2025 passed by the learned Trial Court, a period of one month had been fixed for the purpose of conclusion of examination of the witness on commission, yet such examination has not yet been concluded in view of the repeated adjournments taken by the petitioner.

10. There is however no serious contest as regards the procedural defect alleged to be there in recording of evidence by the learned Advocate Commissioner on November 18, 2025.

11. Heard learned Advocates appearing for the respective parties and considered the material-on-record.

12. It is evident that the suit is one for eviction and the same has been instituted as far back as in the year 2017. It is also noticed that by the order dated July 30, 2025 the learned Trial Court had fixed a period of one month for examination of the defendant's witness but the same is yet to be concluded.

13. The learned Advocate Commissioner has followed the right procedure on November 11, 2025 insofar as examination and recording of deposition is concerned. That was the first day when the petitioner's witness was examined. However insofar as the record of the proceedings conducted on

November 18, 2025 is concerned, the same appears to be flawed. Although, the minutes of the proceeding have been properly recorded, yet the deposition has not been recorded at all. Once a document is tendered in evidence on commission by a witness, the deposition of the witness as well as the document tendered by such witness must be recorded either by marking it as exhibit (with or without objection as the case may be) or by marking it as 'X' for identification if there is doubt as regards the admissibility thereof. In such case if any objection is raised the same has to be recorded by the Commissioner which would definitely form part of the Commission's report. The Commissioner has no authority to reject any evidence or to decide the admissibility thereof or leave out any document tendered. The Commissioner must specifically bring on record whatever is tendered so that the Court can apply it's mind. Having not followed such procedure, the conduct of proceedings on November 18, 2025 cannot be said to be proper.

14. In such view of the matter, the learned Advocate Commissioner shall conduct the examination of commission work afresh from the stage it was left off on November 11, 2025. The learned Advocate Commissioner shall conclude the commission work pertaining to examination of the petitioner's witness within a period of two months

from date. It is clarified that no unnecessary adjournment of the commission work shall be permitted to the petitioner. The time frame for conclusion of commission work as mentioned hereinabove is peremptory and mandatory.

15. If the above time frame expires without the commission being concluded for any reason attributable to the petitioner, the petitioner's witness's evidence who is being examined by the petitioner would stand closed.

16. Having regard to the submission made by Mr. Mukherjee that the real essence of the petitioner's application was that the proceedings were not properly conducted on November 18, 2025 the conclusion of the learned Trial Court as regards rejection of the prayer for removal of the learned Advocate Commissioner is not interfered with. However, the observations made by the learned Trial Court pertaining to the learned Advocate representing the petitioner in the learned Trial Court shall stand deleted from the order impugned.

17. The learned Trial Court is requested to expedite the hearing of the suit and to dispose of Ejectment Suit No. 52 of 2017 as expeditiously as possible and preferably within a period of eight months from the date of conclusion of the aforesaid evidence on commission.

18. With the above observations, C.O. 1076 of 2026 stands disposed of. No costs.

19. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)