

D/L- 41
15/07/2026
Ct. No.- 6
Aritra

C.O. 2075 of 2026
Smt. Santi Guha & Ors.
Vs.
Sri Siba Prasad Guha & Anr.

Mr. Soumitra Deb

....for the petitioners

Mr. Rabindra Narayan Dutta
Mr. Sibasis Ghosh
Mr. Sohom Banerjee

....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order being no.109 dated June 5, 2026 passed by the learned Civil Judge (Sr. Div.), 1st Court at Barasat, District-North 24-Parganas in Title Suit No.17 of 2017.

By the order impugned the application under Section 151 of the Code of Civil Procedure praying for recalling of P.W.2 stood rejected.

The learned advocate appearing for the petitioners submits that the petitioners could not effectively cross-examine the P.W.2 on 09.04.2026 for which, the petitioner prayed for recall of the P.W.2 to cross-examine him.

Prayer for recall of PW-2 for cross-examination is seriously opposed by Mr. Dutta, learned advocate for the plaintiffs/opposite parties. He submits that the petitioners were afforded adequate opportunity to cross-examine the plaintiff witness. He further submits that the opposite parties are unnecessarily delaying the proceedings. He submits that the learned trial judge, by a speaking order

rejected the application under Section 151 of the Code of Civil Procedure.

Heard the learned advocates for the respective parties and perused the materials placed.

Record reveals that on April 9, 2026, the P.W.2 was cross-examined and discharged. The learned trial judge after taking into consideration the submission of the learned advocate for the plaintiffs that the plaintiffs will not adduce any further evidence, closed the evidence of the plaintiff witness and fixed May 5, 2026 for evidence of the defendant witness. On May 5, 2026 the hearing of the suit was adjourned on account of resolution adopted by the local Bar Association and June 5, 2026 was fixed for evidence of the defendant witness. In the meantime, the application under Section 151 of the Code of Civil Procedure was taken out praying for recalling of P.W.2 to enable the petitioner to further cross-examine the P.W.2. Such prayer stood rejected by the impugned order.

However, this Court finds that after rejecting the prayer for further cross-examination of P.W.2, a date was fixed for argument without fixing any date for evidence of the defendant witness. When June 5, 2026 was fixed for evidence of the defendant witness, the learned trial judge ought to have fixed a further date of evidence of defendant witness after rejecting the application for cross-examination of P.W.2. The impugned order thus suffers from infirmity.

For such reason, this Court is inclined to interfere with the order impugned.

That apart, after going through the application under Section 151 of the Code of Civil Procedure this Court finds that the petitioners prayed for recall of P.W.2 to cross-examine the said witness. It has been stated in the said application that though a prayer for deferring the cross-examination to another date was made, the same stood rejected by the learned trial judge.

Since cross-examination is a valuable right, this Court is inclined to afford a last opportunity to cross-examine the P.W.2 subject to payment of cost.

Considering the fact that July 17, 2026 is the next date fixed in the suit, the prayer for recalling the P.W.2 for further cross-examination by the defendants/petitioners herein is allowed subject to payment of cost of Rs.10,000/- by the petitioner to the opposite parties through the learned advocate for the opposite parties before the learned trial judge. Such payment shall be made on or before July 17, 2026.

The PW-2 shall remain present in Court on 17.07.2026 to face cross-examination by the petitioners herein and the cross-examination of PW-2 on recall shall have to be concluded on that date.

In the event, the petitioners fail to tender the said cost to the opposite parties within the date and time mentioned hereinbefore, the order permitting the petitioners to cross-examine the P.W.2 on 17.07.2026

shall stand recalled without any further reference to this Court and the learned trial judge shall fix a date for evidence of the defendant witness and shall proceed further in accordance with law.

For all the reasons as aforesaid, the impugned order stands set aside.

The learned trial judge is requested to dispose of the Title Suit No.17 of 2017 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

CO 2075 of 2026 stands disposed of with the aforesaid direction.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)