

N.22S1
151/CL

CO 4128 of 2025

Smt. Sita Devi Jalan & Ors.

v.

Sk. Barjahan

13.04.26
DL-71
Ct-06
(S.R.)

Mr. Animesh Paul, Adv.

... for the petitioners.

Mr. Sk. Jahadar Alam, Adv.

... for the opposite party.

1. This revisional application is directed against an order dated July 14, 2025 and an order dated September 18, 2025 passed by the learned Civil Judge (Senior Division), 1st Court at Howrah in Title Suit No.92 of 2008.
2. By the order dated July 14, 2025 evidence of the defendant's witness no.1 (DW1) was closed and by the order dated September 18, 2025 the petitioners' application for recalling of DW1 for cross-examination under Order 18 Rule 17 of the Code of Civil Procedure, 1908 was rejected.
3. Title Suit No.92 of 2008 has been filed by the plaintiffs/petitioners praying, *inter alia*, for declaration and injunction. In the said suit, the defendant's witness no.1 (DW1) was being cross-examined. On July 14, 2025, the plaintiffs/petitioners could not cross-examine DW1 wherefor evidence of DW1 was closed and August 27, 2025 was fixed for arguments.

4. The petitioners thereafter filed an application seeking recalling of the witness being DW1 for cross-examination but such application stood rejected by the order dated September 19, 2025. Hence, the revisional application challenging the aforesaid two orders.
5. Learned advocate appearing for the petitioners submits that on July 14, 2025, the petitioners did not intend to take any adjournment at all. It is submitted that the learned advocate for the petitioners was busy in another cross-examination in some other Court and, as such, he could not reach the Court in time.
6. It is submitted that the petitioners filed the application under Order 18 Rule 17 of the Code seeking recall of the defendant's witness thereby clearly mentioning that the learned advocate for the petitioners could not appear before the learned Trial Court in time, since he was busy with another cross-examination in respect of Title Suit No.539 of 2019 at the Court of the learned Civil Judge (Junior Division), 3rd Court at Howrah.
7. It is submitted that since there was no intention to pray for an adjournment, therefore, no application for adjournment was filed.
8. Learned advocate appearing for the opposite party opposes the petitioners' prayer and submits that the petitioners' conduct has not been appreciable.

It is submitted that the learned Trial Court has passed a justified order and the same should not be interfered with.

9. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, this Court is of the view that the orders impugned call for interference for ends of justice.

10. By the order dated July 14, 2025, evidence of the defendant was closed without affording any opportunity to the plaintiffs to show cause for the default in cross-examination of DW1. By the order dated September 18, 2005 the petitioners' application for recall of witness has been rejected on the basic premise that the petitioners did not file any application for adjournment on July 14, 2025 when DW1 was supposed to be cross-examined. The learned Trial Court has not disbelieved the petitioners' assertion that their learned advocate was engaged in cross-examination in another Court. None of the orders impugned reveal that the conduct of the plaintiffs/petitioners was bad.

11. Closure of evidence is a serious affair. It would have serious impact on the end result of suit. In such view of the matter, this Court is minded to give one more opportunity to the petitioners to conclude cross-examination of DW1.

12. For all the reasons aforesaid, the orders impugned

dated July 14, 2025 and September 18, 2025 are set aside.

13. The learned Trial Court shall fix a date upon notice to both the parties on which DW1 shall be present for being cross-examined by the petitioners. In case, DW1 is present, the petitioners shall cross-examine DW1 without seeking any further adjournment. If DW1 is present and the petitioners fail to cross-examine the DW1, the opportunity of the petitioners to cross-examine DW1 would stand closed.
14. Since the suit is of the year 2008, the learned Trial Court is requested to hear out and dispose of the suit as expeditiously as possible and preferably within a period of six months from the next date fixed.
15. With the aforesaid observations, CO 4128 of 2025 stands disposed of. No costs.
16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)