

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 5057 of 2023

Petitioner :- Srimati

Respondent :- Smt. Meena Mishra And Another

Counsel for Petitioner :- Rajendra Pratap Singh, Surendra Pratap Singh

Hon'ble Rajnish Kumar, J.

1. Heard, Shri S.P.Singh, learned counsel for the petitioner.
2. This petition has been filed challenging the order dated 25.04.2023 passed by the Judge, Small Cause Court, Faizabad in Original Suit No.494 of 2014, rejecting the application of the petitioner moved under Order 26 Rule 1 and 2 CPC and the order dated 09.08.2023 passed in Civil Revision; CNR No.UPFZ010032372023, by means of which the revision filed by the petitioner has also been dismissed.
3. The revisionist has filed a suit for permanent injunction and for cancellation of sale deed, wherein after framing of the issues, the petitioner has filed her examination-in-chief and for that purpose she had come to the court. It is not disputed. However after filing of the examination-in-chief, she moved an application under Order 26 Rule 1 and 2 CPC for commission for cross-examination on the ground of illness, against which an objection was filed by the defendant alleging therein that when the petitioner had come for the examination-in-chief, she can also come for the cross examination and only to exert pressure the application has been moved. The trial court, considering the application and the medical prescription dated 11.02.2023 filed alongwith the application, found that it is not discernible from the prescription that the petitioner is not in a position to come for the cross examination. Perusal of the prescription annexed by the petitioner alongwith this petition also indicates that she has not any such illness, on account of

which she can not come to the court. Even otherwise when she can come to the court for the examination-in-chief, it cannot be accepted that she cannot come to the court for cross examination.

4. The application moved under Order 26 Rule 1 and 2 CPC can be allowed, as per Allahabad Amendment inserted by Notificiton dated 22.11.1980, for the reasons to be recorded in writing and if it is necessary in the interest of justice or expedition. Order 18 Rule 4 CPC also provides that the court, for the cross-examination and re-examination, while appointing a commission, may consider taking into account such relevant factors as it may thinks fit.

5. The trial court, after considering the relevant factors, has found that the application is liable to the dismissed and accordingly dismissed the same. The revision filed by the petitioner has also been dismissed considering the grounds of the petitioner. This court does not find any illegality or error in the impugned orders, which have been passed considering the grounds and relevant factors by reasoned and speaking order. The petition is misconceived and lacks merit.

6. The petition is, accordingly, **dismissed**.

(Rajnish Kumar,J.)

Order Date :- 22.11.2023

Banswar