

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4379 of 2016

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Raj Kumar Kaushlendra Prasad Narayan Singh & Ors

.... Petitioner/s

Versus

Dr. Faiyaz Ahmad & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amit Bhushan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 13-05-2016

Heard the learned counsel, Mr. J.S.Arora for the petitioners and the learned senior counsel, Mr. Raghiv Ahsan for the heirs of the deceased respondent No.1 on I.A. No.4048 of 2016.

This application has been filed for substitution of the legal representatives of the deceased plaintiff-respondent No.1. Accordingly, the substitution application is allowed and the legal representatives are substituted in place of the deceased respondent No.1 after deleting his name.

Heard the learned counsels on writ application also.

On 18.03.2016, notices were issued to the respondent No.1.

It appears that the petitioners filed application before the Sub Judge III, Gaya in Title Suit No.188 of 2015/557 of 2008 under Order 26 Rule 2 of the C.P.C. for examination of the



petitioner Nos.1 and 2 on commission as they are unable to come to Court because of their ailment. The Court below by the impugned order, although, held that they are unable to come to Court then they should be examined on commission in a hotel in Gaya.

It is not disputed that they are not able to come to Court for being examined as witness in the case. The question is, therefore, where they should be examined as witness, as their evidences are essential for just decision of the controversies between the parties.

The learned senior counsel, Mr. Raghiv Ahsan also conceded that they should be examined on commission but according to him, they should not be examined in their house. If they are unable to come to Court then they should be examined in any hotel at Patna itself. According to the learned counsel, it is not the case of the petitioner that they are unable to move because they usually go to doctor for their treatment and, therefore, there is no difficulty if they are examined in any hotel.

In view of the above admitted position that the petitioner Nos.1 and 2 are suffering from heart disease and are unable to attend the Court, the Court has the jurisdiction to issue commission for their examination as witness. The dispute is with

regard to place where they should be examined as witness. So far this matter is concerned, once it is admitted that the witnesses are unable to attend the Court, they should be examined where they reside. The Court normally should not direct that they should be examined in any hotel or in any place according to the choice of the other side. The cost of the commission has to be borne by the petitioner herein.

In view of the above position, this writ application is disposed of with the aforesaid direction that the petitioner Nos.1 and 2 should be examined on commission as mentioned above.

(Mungeshwar Sahoo, J)

Saurabh/-

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