

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 47 of 2016**

- Khaliluddin S/o Allauddin, Aged About 66 Years R/o Village Bagbudwa, Tahsil Mungeli, Civil District Bilaspur And Revenue District Mungeli, Chhattisgarh ---- **Petitioner**

Versus

- Ramji Mehar S/o Lakhan Mehar, Aged About 42 Years R/o Daihanpara Battalion Road, Sakri, Bilaspur, Sub Tahsil Sakri, Tahsil Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh ---- **Respondent**

And**WP227 No. 496 Of 2016**

- Khaliluddin S/o Allauddin, Aged About 66 Years R/o Village Bagbudwa, Tahsil Mungeli, Civil District Bilaspur And Revenue District Mungeli, Chhattisgarh ---- **Petitioner**

Vs

- Ramji Mehar S/o Lakhan Mehar, Aged About 42 Years R/o Daihanpara, Battalion Road, Sakri, Bilaspur, Sub Tahsil Sakri, Tahsil Takhatpur, Civil And Revenue District Bilaspur Chhattisgarh ---- **Respondent**

For Petitioner : Shri Mirza Hafeez Baig, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****07/09/2016**

In the first petition bearing WP227 No.47/2016, the petitioner is aggrieved by dismissal of his application under Order 26 Rule 1 CPC, by which, he had prayed for issuance of commission for his examination as a witness. In the second petition bearing WP227 No. 496/2016, the petitioner is aggrieved by the order passed by the trial Court closing his right to lead evidence.

2. When the first petition was heard on 20.01.2016, the petitioner was directed to place on record copy of medical certificate, which has now been filed

along with application (I.A.No.2/2016) for taking additional document on record. The first document is a certificate of disability issued by the District Medical Board, Mungeli, certifying that the petitioner suffers from 85% permanent disability. There are other documents in the nature of report of CT scan and prescription slips.

3. Learned counsel for the petitioner would also submit that the petitioner is not in a position to walk properly and attend the Court, therefore, considering his bodily condition, issuance of commission should have been allowed by the trial Court in the interest of justice.

4. Considering the entire facts situation of the case, particularly, the medical certificate issued by the District Medical Board, it appears, the application for petitioner's own examination as a witness on commission deserves to be granted.

5. Accordingly, WP227 No.47/2016 is allowed. The trial Court is directed to appoint a commissioner with the consent of the parties for recording petitioner's evidence on commission. The petitioner shall deposit cost of commission as determined by the trial Court within a period of two weeks from today. The trial Court shall, thereafter, issue a writ of commission for recording petitioner's statement within next six weeks.

6. The trial Court is also directed to conclude the trial within an outer limit of three months.

7. In view of above, WP227 No. 4906/2016 is also disposed of in the same terms.

Sd/-
Judge
(Prashant Kumar Mishra)