

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 211 of 2018**

1. Mamta Yadav Wd/o Late Rakesh Kumar Yadav, Aged About 52 Years
2. Aanchal Yadav, D/o Late Rakesh Kumar Yadav, Aged About 25 Years

Both R/o Vivekanand Nagar, Street No. 04, Dak Bangla Ward, Dhamtari,
Tahsil And District Dhamtari, Chhattisgarh

---- Petitioners**Versus**

1. Mohammed Akmal Rizvi, S/o Haji Mohammad Alanoor, Aged About 45 Years R/o Indira Ward, Near Head Post Office, Jagdalpur, Chhattisgarh
2. Siddharth Yadav, S/o Late Rakesh Kumar Yadav, Aged About 23 Years R/o Vivekanand Nagar, Street No. 04, Dak Bangla Ward, Dhamtari, Tahsil And District Dhamtari, Chhattisgarh

---- Respondents

For Petitioners : Shri Vivek Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13/03/2018**

1. Heard.
2. The present petition is against the order dated 02.02.2018, whereby the application preferred by the petitioners/defendants to examine a witness on commission was refused by referring to the provisions of Order 26 Rule 8 CPC.
3. Learned counsel for the petitioners would submit that the summons were issued to the Doctor to prove the mental condition of the husband of the defendant and the doctor is residing beyond the jurisdiction of the Dhamtari

Court. Consequently, though the summons were issued but the doctor refused to come, therefore, the Court should have issued a commission for examination under Order 26 Rule 4 of the CPC and submits that the order may be set aside.

4. Perused the order and the documents filed along with the petition. Perusal of the application filed under Order 26 Rule 9 CPC (wrongly written) would show that summons was issued to the doctor to depose before the Court and the doctor appears to be residing out of the jurisdiction of the Court of Dhamtari at Durg. Consequently, under the facts of this case when after service of summon to the doctor he has refused to come, the Court should have invoked the provisions of Order 26 Rule 4 CPC as the person resides beyond the jurisdiction of the Court and no prejudice would be caused to the plaintiff to allow such issuance of commission for examination of doctor on commission. Accordingly, the application for examining the doctor on commission is allowed. A local Commissioner may be appointed by the trial Court for recording the evidence and the remuneration shall be fixed by the Court below.
5. With such observation, the petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge

Ashu