

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

MCC No. 398 of 2018

Mohammed Akmal Rizvi S/o Haji Mohammad Alanoor Aged About 45 Years R/o Indira Ward, Near Head Post Office, Jagdalpur, Chhattisgarh. **---- Applicant**

Versus

1. Mamta Yadav Wd/o Late Rakesh Kumar Yadav Aged About 52 Years R/o Vivekanand Nagar, Street No.4, Dak Bangla Ward, Dhamtari, Tehsil and District Dhamtari, Chhattisgarh, Civil And Revenue District Dhamtari, Chhattisgarh.
2. Anchal Yadav D/o Late Rakesh Kumar Yadav Aged About 25 Years R/o Vivekanand Nagar, Street No.4, Dak Bangla Ward, Dhamtari, Tehsil and District Dhamtari, Chhattisgarh, Civil And Revenue District Dhamtari, Chhattisgarh.
3. Siddharth Yadav S/o Late Rakesh Kumar Yadav Aged About 23 Years R/o Vivekanand Nagar, Street No. 4, Dak Bangla Ward, Dhamtari, Tehsil and District Dhamtari, Chhattisgarh. **---- Respondents**

18.05.2018	Mr. Adil Minhaj, counsel for the applicant. Learned counsel for the applicant/plaintiff submits that summons were issued to doctor to prove the mental condition of the husband of the defendant. Consequently, the summons were issued to the doctor but the doctor has refused to come and thereafter the defendants filed an application under Order 26 Rule 9 of C.P.C., to record the statements of the doctor through the commission and the plaintiff has filed reply to the said application, however, the trial Court has rejected the said application by order dated 02.02.2017. The defendants have challenged the said order in W.P(227) No.211 of 2018 wherein this Court has passed the order dated 13.3.2018 allowing the application and directed the trial Court to appoint the Commissioner for recording the evidence. Perused the order dated 13.3.2018 and documents annexed to the petition. The order has been passed to examine the doctor on commission allowing the application under Order 26 Rule 4 of CPC as the doctor was residing beyond

the jurisdiction of the court and it was further directed that a local commissioner be appointed by the trial court for recording the evidence.

I do not find that any prejudice has been caused to the plaintiff by the said order as it only allows a doctor to be examined on commission. The petitioner/ plaintiff shall have at liberty to cross-examine the doctor to eliminate the facts and on only on technical grounds the order cannot be recalled.

Accordingly the petition has no merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**

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