

1st July,
2021
(AK)
26

C.O. 908 of 2021

(Via Video Conference)

Prapanna Lahiri and another
Vs.
Anindita Maitra and others

Mr. Asis Bagchi
Ms. Malayshree Maity
Ms. Nikita Bardhan
Mr. Pritish Bandopadhyay
...For the Petitioners.

Despite service, none appears for the opposite parties.

Affidavit-of-service filed in court today be kept on record.

Learned senior counsel appearing for the petitioners contends that the matter arises from a probate proceeding, in which the plaintiffs/petitioners took out an application under Order XVIII Rule 16 read with Order XXVII Rules 1 and 3 and Section 151 of the Code of Civil Procedure, for taking the evidence of two of the witnesses expeditiously and on Commission.

Such applications were rejected by the trial court primarily on the ground that if the attesting witness came to court for deposition, it would take less time.

However, such proposition defies logic, particularly since the witnesses concerned are suffering from co-

morbidities, which may seriously and adversely affect them in the event they come to the court premises for adducing witness during these pandemic times.

That apart, the advanced years of the said witnesses itself justifies evidence of the said witnesses being taken expeditiously on commission.

In such view of the matter, C.O. 908 of 2021 is allowed, thereby setting aside the order dated March 6, 2021 passed by the learned Fast Track, First Court at Sealdah, District-South 24 Parganas in Original Suit No. 1 of 2019.

The applications filed by the petitioners in the court below on January 16, 2021, respectively under Order XVIII Rule 16 and Order XXVII Rules 1 and 3, both read with Section 151 of the Code of Civil Procedure stands allowed.

The trial court shall appoint an Advocate Commissioner for the purpose of taking the evidence of such witnesses as prayed for by the petitioners on commission as expeditiously as possible.

Such appointment should positively be made within a fortnight from the date of communication of this order to the court below.

Whoever is appointed as Commissioner is requested to endeavour to complete the adduction of evidence within a reasonably brief period, keeping in view the circumstances of the witnesses.

The court below shall act on the communication of the learned advocate for the petitioners and/or server copy of this order without insisting upon prior production of a certified copy.

There will be no order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)