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CO 6 of 2020
(Through Video Conference)

Sri Narsingh Das Gupta .. Petitioner
Vs.
Smt. Mohini Kedia @ Smt.
Mohini Devi Kedia & Anr. ..Opp. Parties

Mr. Subham Ghosh, Advocate
...for the Petitioner. Present in Court.

Mr. Nabankur Paul, Advocate
...for the Opp. Parties. Present in virtual mode.

The order dated 12.9.2019 passed by the learned court below is under challenge in the present petition. By the aforesaid order an application filed by the petitioner under Order 26 Rule 1 CPC for appointment of a Commissioner for recording of evidence of Ramawatar Sharma, son of Mukh Ram Sharma, resident of Bhadunda, Khurd, Bharunda Khurd, Jhunjhunun, Rajasthan, was rejected.

The learned counsel for the petitioner submitted that Ramawatar Sharma had appeared in the suit way back in the year 2013. He had also filed his written statement. Thereafter he did not appear in the suit. As his statement in the matter is necessary, application was filed for appointment of a Commissioner for recording his evidence, considering the fact that during the interregnum he had shifted to Bhadunda, Khurd,

Bharunda Khurd, Jhunjhunun, Rajasthan. He further submitted that the petitioner is ready to bear the expenses of the Commissioner and also the defendant and her counsel, who may accompany the Commissioner to be present at the time of recording of statement of Ramawatar Sharma. He further submitted that being 85 years of age and suffering from various health problems, it is not possible for Ramawatar Sharma to travel to Jalpaiguri for getting his statement recorded. It is also for the reason that the we are affected by Covid-19 Pandemic and there are lot of restrictions on travel, specially for senior citizens.

On the other hand, the learned counsel for the respondents submitted that the documents regarding residence of Ramawatar Sharma and also his health position were not placed on record by the petitioner before the learned court below. He further submitted that identity of the person may have to be established before his statement is recorded.

After hearing the learned counsels for the parties, in my opinion, mere non-production of Aadhar Card and the medical record of Ramawatar Sharma before the court below for recording of whose statement, Commissioner is sought to be appointed, will not detain this court to pass appropriate order. He

is stated to be 85 years of age and had shifted to Bhadunda, Khurd, Bharunda Khurd, Jhunjhunun, Rajasthan. The aforesaid address is evident from the copy of Aadhar Card placed on record. It was also claimed at the time of hearing that even his service was also effected at the same address.

As far as the identity of the person concerned, there is merit in the argument raised by the learned counsel for the opposite parties. Hence, the petitioner is to establish the identity of the person, namely, Ramawatar Sharma, son of Mukh Ram Sharma, resident of Bhadunda, Khurd, Bharunda Khurd, Jhunjhunun, Rajasthan. The Court Commissioner and the defendant and her counsel, if accompanying him, will approach the Court of Civil Judge (Senior Division), Jhunjhunun who shall take appropriate steps to ensure that the identity of the person is established before his statement is recorded. In case, any expenses are required to be incurred for the purpose, the petitioner shall bear the same.

It is further directed that the expenses for travel and stay of the defendant and her counsel shall also be borne by the petitioner.

The Commissioner, who is to visit Rajasthan for recording the statement of Ramawatar Sharma, shall be appointed by the learned court below and even the

expenses thereof or for the travel and stay of the defendant and her counsel, shall be fixed by the court.

The Court Commissioner shall take all requisite precautions to correctly record the statement made by Ramawatar Sharma and it would be appropriate if such a statement is also audio recorded along with the handwritten type/computer typed copy thereof and the signature/thumb impression taken after proper identification. Copy of the duly signed statement and audio recording thereof shall be sealed after recording of his statement under the signatures of both the parties and the Commissioner, shall hand over the same in court. The aforesaid sealed cover shall be opened only in the court of Civil Judge, Senior Division, Jalpaiguri in the presence of both the parties.

For the reasons stated above, impugned order passed by the learned court below is set aside. The present petition is disposed of in the aforesaid terms.

(Rajesh Bindal, J.)

