

14.09.2022
Item No.37
Ct. No.7
CHC
(disposed of)

C.O.2402 of 2022

Smt. Anjana Chakaraborty
Vs.
Sri Debajyoti Chakraborty & anr.

Mr. Asis Kr. Bagchi,
Mr. Rajendra Banerjee
...for the petitioner

Mr. Dibyayan Banerji
...for the opposite parties

Mr. Bagchi, learned Senior Advocate appearing for the petitioner disputes with the impugned order dated 27th July, 2022, passed by the learned Judge, Small Causes Court, at Sealdah in Title Suit No.47 of 2016, rejecting the prayer for examination of a witness on commission.

Mr. Bagchi, submits that petitioner seeking examination on commission is 61 years old having co-morbidity and obesity. Apart from the co-morbidity of the petitioner, petitioner suffered fracture of her right Proximal Femoral Bone, which substantially restricted her mortality issue though she can walk, but with some discomfort.

Learned advocate appearing for the opposite parties, upon receiving a copy of application supplied in court today, submits supporting the order of the court below that there lies nothing to be interfered

with, as the petitioner can freely walk, and the story of having fracture of right Proximal Femoral Bone happened long before, and as such the medical ground would not sufficient enough to justify examination of such witness on commission.

It is also contended by the learned advocate for the opposite parties that the entire purpose of the petitioner is to cause delay to the suit.

Having considered the submission of both sides, it appears that rejection of a prayer for examination of witness on commission in a Partition Suit is under dispute in this case.

Admittedly, petitioner is 61 years old, and her evidence is necessary to unfold the claim for partition. Though, petitioner suffered fracture injury sometimes before, but at the moment, she has co-morbidities with obesity issue.

Upon perusal of the impugned order, it appears that the court below disputed with the facts disclosed by the petitioner, while seeking examination of witness on commission, on the score, that no such prayer was proposed earlier, even after the recovery of fracture injury, and further that the petitioner is very much in walkable condition.

The settled proposition of law is very clear that examination of witness on commission under a compelling circumstances would not take away the

right of cross-examination of the defendants/opposite parties.

That being the position, no further elaboration is necessary on such issue involved in this case.

The revisional application is disposed of upon setting aside the order dated 27th July, 2022, passed by learned Judge, Small Causes Court, at Sealdah in Title Suit No.47 of 2016, and thereby permitting examination of petitioner, as D.W., on commission, which must be completed within four (04) weeks after the Puja Vacation of the court below.

The opposite parties have every right to make cross-examination of such witness in context with the pleadings submitted by the parties.

It is however, clarified that while doing such exercise, petitioner is given liberty to file an application for preponement of the date, so that learned advocate Commissioner may be appointed by the court below for the purpose, upon notice to the other sides, and learned Commissioner must collect the evidence on commission before the date stipulated hereinabove.

This order is of course subject to the deposition costs of learned Advocate Commissioner fee, for taking down the evidence of witness on commission.

The learned court below to dispose of the preponing application together with appointment of

learned Advocate Commissioner in presence of the both sides.

Parties are directed to communicate this order to the learned court below.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)