

06.01.2022  
(S/L-12)  
Ct.-18  
(Susanta)

**(Via Video Conference)**

C.O. 2126 of 2021

Syamal Kumar Ganguly  
-Vs-  
Uma Ghosh

Mr. Sourav Sen,  
.... For the Petitioner.

Mr. Kaushik Dey,  
Mr. Debdipto Banerjee,  
... For the Opposite Party.

The defendant in a suit for declaration of title and injunction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against the order dated October 05, 2021 passed by the 2<sup>nd</sup> Court of learned Civil Judge ( Junior Division) at Bidhannagar, District 24-Parganas(North) in the said suit being Title Suit no. 112 of 2014.

An Advocate Commissioner has been appointed to record the evidence of the petitioner on the prayer of the plaintiff/opposite party but for the failure of the petitioner to offer himself for recording of such evidence, the learned Trial Judge by the order impugned has closed the evidence of the petitioner and fixed the said suit for argument.

Mr. Sourav Sen, learned advocate appearing on behalf of the petitioner submits that the

petitioner is aged about 74 years and due to the prevailing Covid-19 situation, he could not appear before the Commissioner for recording of his evidence.

Considering the age of the petitioner and the outbreak of the third wave of Covid-19 pandemic, this Court is of the opinion that the petitioner should be given an opportunity to adduce evidence in the suit.

The order dated October 05, 2021 is, therefore, set aside.

The petitioner is permitted to adduce evidence before the appointed Commissioner on January 14, 2022 subject to payment of the Commissioner's fees of Rs.10,000/-.

The Commissioner shall record the entire evidence i.e. examination-in-chief and cross-examination of the petitioner in one day.

The Standard Operating Procedure (SOP) for the Covid-19 Protocol shall be observed in recording the said evidence.

In the event due to some unavoidable circumstances, the recording of the evidence of the petitioner cannot commence on the aforesaid date, the Commissioner is free to fix any date convenient to all parties for the purpose of recording of such evidence but the recording of

the evidence of the petitioner must be concluded in one sitting.

The suit is pending since 2014 and it has reached at a very matured stage, as such, the learned Trial Judge is requested to make all endeavour to dispose of the said suit as expeditiously as possible in accordance with law, preferably within a period of three available effective working months of the said Court from the date of putting the recorded evidence of the petitioner on record by the Commissioner.

C.O. 2126 of 2021 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the party subject to compliance with all requisite formalities.

(Biswajit Basu, J.)