

16.06.2022
Item no.5
Aloke

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

**CO 6 of 2022
Thomas Gellatly
Vs.
Mr. George Gellatly & Ors.**

Mr. Birkramaditya Ghosh, Advocate
Mr. Supriya Singh, Advocate
...For the petitioner
Mr. Bijoy Saha, Advocate
... For the opposite party nos. 1 to 5

Mr. Anmole Prasad, Sr. Advocate
Mr. Sagar Chhetri, Advocate
... For the opposite party
Nos. 6 and 7
Mr. Deepak Sharma, Advocate
... For the Applicant/Executor

The revisional application is directed against the Order No. 24 dated April 13, 2021 passed in Misc. Judicial (P) Case No. 20 of 2017.

By the impugned order, the learned District Delegate, Siliguri was pleased to dismiss the petition praying for permission to adduce evidence by way of video conferencing.

The grounds for dismissal are that the reason for video conference were not compelling enough. Moreover, the learned District Delegate found that the infrastructure of the Court did not permit adducing evidence through video conference. He also found that there was nothing to show that the witness was physically unfit to travel to Siliguri to depose.

Learned Advocate appearing for the petitioner relies upon **(2003) 4 SCC 601 (State of Maharashtra vs. Dr. Praful B. Desai)** and **(2004) 3 Cal LT 263 (Amitabh Bagchi vs. Ena Bagchi)** in support of his contention that evidence by video conferencing is permissible. He also relies upon the notification dated December 24, 2021 of the High Court. He submits that the rules for video conferencing of Courts are in place and, therefore, there is no impediment on the learned District Delegate is allowing the prayer for adducing evidence through video conference.

Access to justice is one of the basic structure of our Constitution.

In the facts of the present case, a Probate petition was under consideration by the District Delegate.

The applicant for Probate wanted to adduce evidence through video conference since such witness was a resident of Scotland and is an advanced age.

There is a pandemic ongoing.

By the notification dated December 16, 2021 bearing no. 3097-G the High Court notified rules for video conferencing for Courts.

Amitabh Bagchi (Supra) and **Dr. Praful B. Desai (Supra)** recognizes that video conferencing with regard to the Court proceeding is permissible.

To my understanding, law does not prevent evidence being taken by way of video conferencing.

In such circumstances, it would be appropriate to allow the petition filed praying for permission to adduce evidence by way of video conferencing.

The learned District Delegate will allow parties to adduce evidence through video conference. He will take suitable measures for the purpose of making available requisite infrastructure for the purpose of holding the video conference.

The learned District Judge, Darjeeling is also requested to ensure that the requisite infrastructure is at the disposal of the learned District Delegate in order to facilitate the recording by vide conference.

The Court is informed that the next date before the District Delegate is July 14, 2022. It is expected that the learned District Delegate allows witness action to take place on the virtual platform on such date.

CO 6 of 2022 is disposed of.

(Debangsu Basak, J.)