

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Appellate Side**

14.06.2022

Item no **16**

Dd

CO 58 of 2022

**Smt. Rachana Pradhan @ Rachna Pradhan & Ors.
Vs.
Smt. Shalla Sultan Plant**

*Mr. Sandip Mandal
Mr. Abhilash Mittal, Advocates
... ... For the Petitioners*

*Mr. Nabankur Paul
Mr. Rajdeep Bhattacharya, Advocates
... ...For the Opposite Party*

The revisional application is directed against the order dated March 16, 2022 passed in Misc. Case no. 6 of 2021 arising out of Title Suit no. 7 of 2021.

By the impugned order, the learned Judge was pleased to reject the application of the petitioner for examining the Advocate Commissioner as the plaintiff witness no. 2.

Learned advocate appearing for the opposite party submits that although an Advocate Commissioner was appointed, his report was never accepted. Opposite party objected to the existence of such report. Therefore, there is no need for examination of the Advocate Commissioner.

In a suit for declaration and injunction, the Court appointed an Advocate Commissioner. The suit is at the stage of trial with the plaintiffs adducing their evidence. In the suit, the plaintiffs obtained an order of injunction. The plaintiffs filed

Misc. Case No. 6 of 2021 under Order 39 Rule 2A of the Code of Civil Procedure, 1908 complaining of violation of the order of injunction by the opposite party. In such Misc. case no. 6 of 2021, the plaintiffs applied for examining the Advocate Commissioner appointed by the Court. Such prayer was rejected by the impugned order. The learned Judge was pleased to record that the Court does not find any whisper about the Commission work done in original Title Suit, nor find any relevance of the calling of Learned Advocate Commissioner to depose on behalf of plaintiffs.

The records made available to the Court establish that the Advocate Commissioner was appointed in the Title Suit.

The plaintiffs seek to examine such Advocate Commissioner as the plaintiff witness in Misc. Case No. 6 of 2021.

In such circumstances, the learned Judge acted with material irregularity in not allowing the plaintiffs to examine a witness which the plaintiffs are seeking to produce at the trial of Misc. Case No. 6 of 2021.

Consequently, the impugned order is set aside. The application of the plaintiffs dated March 16, 2022 to examine Advocate Commissioner as the plaintiff witness no. 2 is allowed.

CO 58 of 2022 is **disposed of** accordingly without any order as to costs.

(Debangsu Basak, J.)