

17.04.2023
Item No. 222
Ct. No. 237
RUP

CO. 731 of 2023

Bijali Samanta & Ors.
Vs.
Sukanta Sana

Ms. Madhumita Patra ... for the petitioners.

Mr. Tanmoy Chakraborty,
Mr. Twinkle Santra. ... for the opposite party.

The Order No. 107 dated 9th January, 2023
passed in T.S. NO. 466 of 2017 has been challenged.

Both the learned advocates appearing on behalf
of the parties to this revisional application are
present.

Learned advocate appearing on behalf of the
petitioners/defendants has submitted that defendant
is required to be examined as DW-1 and for that one
application was filed under Order 26 Rule 1 of the
Code of Civil Procedure for examination of the
defendant/petitioner as DW-1 on commission. It is
submitted on behalf of the petitioners that
defendant/petitioner is ill.

In opposition to that, learned advocate
appearing on behalf of the plaintiff/opposite party
has referred to the order impugned itself and
submitted that on earlier occasions same application

was filed before the Trial Court for examination of DW-1 on commission but that was refused. It has been further submitted that DW-1 attended the office of Registrar on 24th February, 2022 and he executed a deed of gift not on commission but after attending before registrar.

After careful perusal of the entire order dated 9th January, 2023, I find that on behalf of the petitioner no document was filed before the trial court showing his inability to move and rather from order impugned, it is seen that medical certificates were submitted before the learned Trial Court on three occasions when he was advised to take rest for seven days only, that too all in the year 2019, 2021 and 2022.

However, considering the entire materials on record as well as on query of this court, learned advocate appearing on behalf of the petitioners/defendants could not produce any document showing the inability of the petitioner/defendant to attend the court for examination as DW-1 that is why I find no reason to interfere with the order invoking the provision of Article 227 of the Constitution of India as only age of a person cannot be the condition precedent for invoking the provision under Order 26 Rule 1 of the Code of Civil Procedure.

Thus, the revisional application stands dismissed.

Petitioners are directed to make communication of this order to the learned Civil Judge (Senior Division), Chandernagore.

All the parties shall act on the server copy of this order duly downloaded from the official web site of this Court.

(Bibhas Ranjan De, J.)