

July 12, 2023
Sl. No.2
Court No.19
s.biswas

CO 1605 of 2023

Manasi Sen
vs.
Bikash Chandra Das and another

Mr. Pinaki Ranjan Mitra

... for the petitioner

Mr. Tulsi Das Ray

Mr. G. F. Hossain

... for the opposite parties

This revisional application has been filed challenging the Order No.375 dated May 2, 2023 passed in Title Suit No.173 of 2015 passed by the learned Civil Judge (Junior Division), Additional Court, Serampore, Hooghly.

By the order impugned, the learned court below rejected the application filed under Order 26 Rule 1 read with Section 151 of the Code of Civil Procedure. The said application was filed by the defendant for adducing evidence on commission. The defendant prayed that an advocate commissioner be appointed to examine the defendant at her residence on commission on account of physical incapacity.

A prescription of Dr. Kalyan K. Palit dated April 28, 2023 is filed in the form of supplementary affidavit and the same is taken on record. The contention of the defendant was that she was a paralytic patient and was completely bed-ridden. She was unable to depose before the court in support of

the her case. She was ready to pay the cost of the commission.

The learned court below rejected the said plea on the ground that the suit has been pending for eight years. The evidence of the plaintiff was closed on March 27, 2023. Thereafter, April 17, 2023 was fixed for DW. The defendant prayed for adjournment and the next date was fixed on May 2, 2023. On the previous occasions, the defendant had not mentioned about the illness. The learned court below, thus, did not accept the contention of the defendant that she was suffering from paralysis and was unable to depose in court. The court held that the medical certificate did not indicate whether the physical condition of the petitioner was permanent or temporary. The learned court below proceeded on the basis of the issue as to whether the defendant would be able to understand the implication of adducing evidence or whether she would be able to speak or not were relevant factors. Mere certificate from the doctor that she was paralytic would not suffice. Hence, the application for examination on commission was rejected.

In my view, the doctor who is treating the defendant, has categorically stated that the defendant was bed-ridden due to hemiplegia on the right side of her body. As a result, she was not even

able to sign. As mentioned by the learned court below, whether the petitioner was able to speak or whether she was able to understand the consequences were not relevant. Whether a person suffering from paralysis could take the box and depose in court, is the issue. A patient suffering from paralysis cannot be made to take the box and depose.

The revisional application is thus allowed and disposed of. The learned court below is directed to pass necessary order by appointing a learned advocate commissioner, who shall examine the defendant on commission. Cost of such commission will be borne by the petitioner and deposited in court within the time to be fixed by the court. The cross-examination shall also be done on commission. The commission will take place at the residence of the defendant in the presence of the opposite parties and all respective learned Advocates. The examination-in-chief and cross-examination shall be completed within two consecutive days as may be fixed by the learned court below.

The entire exercise, as directed above, shall be completed within a month from the date of communication of this order. The suit shall proceed expeditiously and be disposed of within three

months from completion of the commission. The order impugned is set aside.

This court has not gone into the merits of the issues in the suit.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)