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05.9.2023
Ct. 3
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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

C.O. 100 of 2023

In the Matter of : Ananda Kumar Ojha

Ms. Suma Sehanabis (Mandal) ... for the petitioner

Defendant No. 1 Ananda Kumar Ojha, 84 years old gentleman has appointed his wife Smt. Archana Ojha who has direct knowledge over the dispute as his attorney to adduce evidence before the Court. But the learned Trial Court was pleased to reject the prayer on the ground that no medical document was produced by the petitioner. Since no petition was filed under Order 26 Rule 1 of the Code of Civil Procedure learned Trial Court could not have insisted for certificate signed by the registered medical practitioner as appended to explanation to the proviso to Order 26 Rule 1 of Code of Civil Procedure.

The order impugned is manifestation of exercise of erroneous jurisdiction by the learned Trial Court, in breach of Order III of the Civil Procedure Code.

The impugned order No. 190 dated 17.4.023 is set aside.

Learned Trial Court is directed to allow the attorney appointed by defendant no. 1 to adduce evidence on behalf of the defendants.

The revisional application is disposed of, along with application if any.

Let a copy of the order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)