

March 12, 2024
Sl. No.14
Court No.19
s.biswas

CO 309 of 2024

Anup De Chowdhury
vs.
Prasanta Kumar Mullick

Mr. Rajat Dutta
Ms. Sanjukta Ray

... for the petitioner

Mr. Debdipto Banerjee
Mr. Soumen Banerjee

... for the opposite party

The revisional application arises out of an order dated January 19, 2024 passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah, District 24 Parganas (South) in Ejectment Suit No.55 of 2017.

The learned court rejected the prayer for adjournment of the suit and closed the evidence of DW.

Sufficient records have been shown before the court which would indicate that the petitioner is suffering from Ischaemia and some procedure had been conducted by the department of cardiology, AMRI Mukundapur. There are dietary restrictions and also some restrictions with regard to intake of fluid. The reports indicate that the petitioner is also recovering from such ailments. The procedure was performed some time in January 2024.

Thus, this court is of the view that the closure of evidence of DW at a time when the petitioner was suffering from coronary decease, was unjust.

The order impugned is set aside. The petitioner is the only defence witness. He shall be allowed to tender his examination-in-chief and be cross-examined on the dates to be fixed by the learned court. However, taking into account the state of health, this court directs the learned court to allow the examination on commission. No further application shall be required for the purpose, save and except that the parties will file an application for only naming the learned advocate commissioner, who shall record the deposition of the petitioner on commission. The cost shall be borne by the petitioner for such commission. The evidence of DW (both chief and cross-examination) shall be concluded within three days. The court shall decide the dates upon nominating the learned Advocate Commissioner. In view of the delay caused in the suit, which is pending since 2013, cost of Rs.5000/- shall be paid to the plaintiff within three weeks from date. The court shall proceed with the compliance of this order, upon being satisfied that Rs.5000/- cost has been paid.

The revisional application is accordingly disposed of.

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.)