

Court No. 6
(265719)

10.03.2025
(AD 38)
(S. Banerjee)

CO 356 of 2025

Ajay Ram & Anr.
Vs.
Sudha Madhab Chakraborty

Mr. Uday Shankar Bhattacharya
Ms. Sudeshna Basu Thakur
Ms. Banani Bhattacharjee
Ms. Upasana Das

...for the petitioners

Ms. Debjani Sengupta
Mr. Ratan Pal
Ms. Poulomi Ghosh

...for the opposite party

This application under Article 227 of the Constitution of India is directed against an order dated December 16, 2024 passed by the learned Civil Judge (Sr. Division), 4th Court at Alipore in Title Suit No. 177 of 2023. By the order impugned the application under Order 26 Rule 2 of the Code of Civil Procedure stood allowed and a Commissioner was appointed to record the evidence on examination and cross-examination of the plaintiff, namely Sudha Madhab Chakraborty as PW-1. The application for examination of PW-1 on commission was on the ground that he is 86 years old and is suffering from various ailments.

Mr. Bhattacharya, learned advocate appearing for the petitioners submits that no prescription and/or medical documents have been produced to show that the plaintiff is suffering from Parkinson's disease. Pursuant to the order dated February 26, 2025, the learned advocate for the opposite party produced the certificates.

After going through the certificates this Court finds that the opposite party herein has produced a prescription dated February 1, 2025. Such document is subsequent to the passing of the impugned order. However, after going through the order impugned, this Court finds that the learned trial Judge allowed the prayer for examination of PW-1 on commission only by taking note of the old age of the plaintiff. The learned trial Judge did not express any opinion as to the ailment which the plaintiff/opposite party herein is alleged to be suffering from.

For such reason this Court is inclined to interfere with the order impugned. The impugned order insofar as allowing the application under Order 26 Rule 2 of the Code of Civil Procedure by appointing Commissioner to record the evidence of PW-1, is set aside. The application under Order 26 Rule 2 of the Code dated February 23, 2024 is restored to the file of the learned trial Judge. It will be open to the

plaintiff/opposite party herein to produce relevant medical documents in support of the ailments which the plaintiff is alleged to be suffering from.

Learned trial Judge is directed to consider the said application after giving an opportunity of hearing to the learned advocate for the respective parties and dispose of such application by passing a reasoned order as expeditiously as possible within a period of one month from the next date fixed, without granting any unnecessary adjournment to either of the parties.

CO 356 of 2025 stands disposed of with the above observations and directions.

(Hiranmay Bhattacharyya, J.)