

M/L- 86
11/03/2025
Ct. No.-6
Aritra

C.O. 482 of 2025

**M/s. Farmania Agencies
Versus
M/s. Singh Projects Private Ltd.**

Ms. Pooja Jewrajka
...for the petitioner

This application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for eviction and is directed against an order being No.21 dated January 21, 2025 passed by the learned Civil Judge (Jr. Div.), 1st Court, Sealdah in Ejectment Suit No.106 of 2007.

By the order impugned the application under Order 26 Rule 1 of the Code of Civil Procedure stood allowed.

The learned advocate appearing for the petitioner submits that no medical documents was filed by the opposite party herein to show that the PW 1 is not able to appear before the Court for giving evidence. She further submits that an application under Order 26 Rule 1 of the Code of Civil Procedure could not have been allowed in a routine manner. In support of such contention she placed reliance upon a decision of the Hon'ble High Court of Madhya Pradesh at Jabalpur in the case of **Shyamnath Sharma vs. Kripal Singh Bedi & Anr.**, order dated December 9, 2024.

In the application under Order 26 Rule 1 of the Code of Civil Procedure it has been specifically stated that Hriday Narayan Singh deposed in the suit as PW 1. He filed examination-in-chief and tendered the same and also filed some documents. Thereafter, the PW 1 was cross-examined by the learned advocate for the defendant on different dates. It has been further stated in the said application that PW 1 suffered from brain stroke and was not in a position to move outside his house. The statement contained in the said application remains uncontroverted as no written objection to such application has been filed by the petitioner herein before the learned Trial Judge.

In **Shyamnath Sharma (supra)** the Hon'ble Single Judge took note of the decision of a co-ordinate Bench of the Hon'ble High Court of Madhya Pradesh in M.P. No.3736/2019. In the said case it was noted that it is not the case of the petitioner that the witness is completely bed-ridden and is not able to move at all.

In view thereof this Court is of the considered view that the facts of the case in **Shyamnath Sharma (supra)** is clearly distinguishable and the same cannot come to the aid of the petitioner. In the case on hand it has been specifically stated in the said application that the petitioner suffered from brain stroke and was not able to go outside the house.

That apart, this Court is not deciding the application under Order 26 Rule 1 of the Code of Civil

Procedure but sitting under Article 227 of the Constitution of India this Court has to see whether the learned Trial Judge exercised its discretion judiciously by allowing an advocate commissioner to take the evidence of the PW 1.

For all the reasons as aforesaid CO 482 of 2025 stands disposed of.

The learned advocate appearing for the petitioner submitted that a direction may be passed to dispose of the suit expeditiously.

In the light of the submission made by the learned advocate for the petitioner the learned Civil Judge (Jr. Div.), 1st Court, Sealdah is requested to dispose of the Ejectment Suit No.106 of 2007 as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)