

D/L- 145
12/06/2025
Ct. No.-6
Aritra

C.O. 1134 of 2025

Sri Basudeb Saha & Anr.
Vs.
Sri Subham Saha & Anr.

Mr. Nanigopal Chakraborty
....for the petitioners

Mr. R. Mahato
Mr. A.S. Ray
....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiffs and is directed against an order being No.40 dated December 7, 2024 passed by the learned Civil Judge (Jr. Div.), Kharagpur, District-Paschim Medinipur in Title Suit No.34 of 2022. By the order impugned the evidence of the plaintiff stood closed.

The learned advocate appearing for the petitioner submits that the evidence of the medical officer is necessary for the purpose of proving the case of the plaintiff.

Mr. Mahato, learned advocate appearing for the opposite party submits that in spite of issuance of summons upon the medical officer, the medical officer did not turn up on repeated occasions and, therefore, the learned trial judge closed the evidence of the plaintiff.

Heard the learned advocates for the parties and perused the materials placed.

After going through the application filed by the petitioner before the learned trial judge praying for issuance of witness summons, this Court finds that it has been stated therein that the medical officer should come and depose along with the treatment papers of Nityananda Saha (since deceased).

Order XVI Rule 10 of the Code of Civil Procedure comes into play where the witness fails to comply with summons.

Order XVI Rule 10 (2) states that where the Court sees reason to believe that such evidence or production is material and such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons, Court may issue proclamation.

Petitioner could not satisfy this Court that the evidence of the Medical Officer is material for the adjudication of the case.

After going through the materials on record, this Court finds that though December 7, 2024 was fixed for evidence of medical officer as last chance and on that date the medical officer did not turn up. The plaintiff merely filed the hazira. It is not the case of the plaintiff that apart from the medical officer they have other witnesses to cite in their favour.

In view thereof, this Court is of the considered view that the learned trial judge was right in closing the evidence of the plaintiff. This Court do not find any reason to interfere with the order impugned.

Accordingly, CO 1134 of 2025 stands disposed of.

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.)