

08.4.2026
Ct. no. 6
D/L.48
Samarpita

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
(Appellate Side)

C.O. 914 of 2025

Anil Kumar Gupta @ Anil Gupta
Vs.
Asit Dutta

Mrs. Shohini Chakraborty,
Ms. Prajaaini Das

... for the Petitioner

Mr. Sagnik Chatterjee,
Mr. Sayan Mukherjee

... for the opposite party

1. This revisional application assails an order dated February 24, 2025, passed by the learned Civil Judge (Junior Division) 1st Court at Durgapur, whereby, the petitioner's application for modification/recalling of order no. 52 dated January 7, 2025 and an application under Order 26 Rule 10 read with Section 151 of the Code of Civil Procedure praying for taking of evidence on commission have been dismissed.
2. The petitioner is the plaintiff in Title Suit No. 3 of 2018. In the said suit, a learned advocate had been appointed as a Commissioner for conducting inspection in terms of an order passed on an application under Order 39 Rule 7 of the Code. Such

Advocate-Commissioner was cited as a witness and was being examined as P.W.3.

3. Since P.W.3 was stationed beyond the jurisdiction of the Court, her evidence was supposed to be taken through virtual mode. On December 23, 2024 which was the date fixed for examination of P.W.3, an adjournment was prayed for on behalf of the petitioner (plaintiff) which was granted by the learned Trial Court and January 7, 2025 was fixed as the last chance.
4. On January 7, 2025, another adjournment was sought for which was declined by the learned Trial Court and plaintiff's evidence was closed.
5. The petitioner then filed an application seeking recalling of the order dated January 7, 2025 while asserting that the learned Advocate-Commissioner (P.W.3) was suffering with certain gynaecological problems and as such she was unable to depose even through virtual mode on the date fixed i.e. January 7, 2025. The application for recalling of the order dated January 7, 2025 also came to be rejected by the order dated February 24, 2025. Hence, the revisional application.
6. Mrs. Sohini Chakraborty, learned advocate appearing for the petitioner has taken this

Court through the application for adjournment filed before the learned Trial Court on January 7, 2025 as well as the application for appointment of an Advocate-Commissioner to take the deposition of the learned Advocate-Commissioner (P.W.3) at Noida on commission, and submitted that it will be evident from the applications themselves that it was not for any other reason, but medical, that the learned Advocate-Commissioner (P.W.3) could not depose on the date fixed.

7. Mr. Sagnik Chatterjee, learned advocate appearing for the opposite party submits that the learned Trial Court has rightly passed the order impugned inasmuch as the conduct of the petitioner has been not above board. He has taken this Court through the orders passed by the Court from time to time in a bid to demonstrate that the petitioner has been lax in proceeding with the suit.
8. Mrs. Sohini Chakraborty, learned advocate quickly retorts that the learned Trial Court ought not to have been influenced by the adjournments granted earlier and held the same against the petitioner inasmuch as the petitioner (Plaintiff) has no control over the learned Advocate-Commissioner who was to

depose as P.W.3. She further submits that rejection of the applications seeking an opportunity to adduce evidence and closure of evidence of the plaintiff would have serious consequences, on the end result of the proceedings.

9. Having heard the learned advocates appearing for the respective parties having considered the materials on record, this Court is of the view that interference with the order impugned is called for.

10. While it is true, that the learned Trial Court had granted more than one opportunities to the learned Advocate-Commissioner to depose as P.W.3 even through video conferencing, yet, it cannot be lost sight of that the petitioner had/has no control over the said witness who is actually an officer of Court being appointed by the Court. Seen in such light, adjournments which had already been granted by the learned Trial Court should not have been held as a ground for closing the evidence all together by the learned Trial Court.

11. For the same reason, if the learned Trial Court was not satisfied with the reasons cited in the application for adjournment of examination of P.W.3, then it should have

afforded at least one more opportunity to the petitioner to produce documents in support of the contention that the learned Advocate-Commissioner over whom the petitioner had no control was indeed ill.

12. For all the reasons aforesaid, in the interest of justice, the order dated January 7, 2025 and the order dated February 24, 2025 (to the extent the order dismisses the petitioner's application under Order 26 Rule 10 read with Section 151 of the Code) are set aside. The petitioner is granted liberty to approach the learned Trial Court with a fresh application annexing therewith documents in support of the petitioner's contention that P.W.3 was suffering from gynaecological problems as contended in the applications made before the learned Trial Court. In case the learned Trial Court is satisfied with the reasons cited, the learned Trial Court shall fix a date on which P.W.3 shall make herself available for examination through virtual mode or through learned advocate-commissioner as the learned Trial Court may fit and proper.

13. With the aforesaid observations, **C.O. 914 of 2025** stands disposed of.

14. There shall be no order as to costs.

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

(Om Narayan Rai, J.)