

08.06.2026
Ct. No.6
Sl. No.8
skg

C.O. 969 of 2026

Tarak Pal
Vs.
Smt. Renubala Paul & Anr.

Mr. Budev Chatterjee, Adv.
Mr. Gourav Sarkar, Adv.

...for the petitioner

Mr. Prantick Ghosh, Adv.
Mr. Prasad Bhattacharyya, Adv.

...for the opposite parties

1. This revisional application is directed against an order dated February 7, 2026 passed by the learned Civil Judge (Jr. Div.), 1st Court at Howrah in Title Suit no. 22 of 2007 whereby the petitioner's application under Order 26 Rule 1 of the Code of Civil Procedure, 1908 requesting for recording evidence of one Ratan Guha on commission has been rejected. A supplementary affidavit was also filed on May 20, 2026 bringing on record an order dated March 24, 2026 whereby the petitioner's evidence was closed during pendency of the revisional application, despite liberty being granted by this Court to the petitioner to pray for an adjournment before the learned Trial Court on the said date.
2. The petitioner has instituted Title Suit no. 22 of 2007 against the opposite parties praying inter alia, for a decree for declaration that the petitioner is the exclusive owner and occupier of the 'B' schedule property; that the

‘C’ schedule property is jointly owned by the parties; that a deed of gift executed on February 6, 2004 by one Netai Chandra Paul in favour of one Tara Paul is illegal and void and for permanent injunction. The said suit has matured to the stage of evidence.

3. In course of adduction of evidence, the petitioner cited one Ratan Guha as a witness and filed an application under Order 26 Rule 1 of the Code before the learned Trial Court thereby requesting the learned Trial Court to grant permission for recording evidence of the said witness on commission since the said witness is 74 years old, bed ridden and undergoing treatment under one Dr. Biman Kanti Roy. The said application indicated that the said Ratan Guha was also known as Dilip Kumar Guha. A medical prescription in the name of Dilip Kumar Guha was also filed along with the said application in support of the witness’s illness.
4. The learned Trial Court has rejected the said application observing that *“the plaintiff in his application also mentioned that the said Ratan Guha and Dilip Kumar Guha is the same and identical person but no document has been produced by the plaintiff in this regard.”*
5. The learned Trial Court has declined the petitioner’s prayer on the sole ground that no document has been produced before the learned Court evincing that Ratan Guha and Dilip Kumar Guha were the names of the

same person. Feeling aggrieved by such order rejecting the said application, the petitioner has approached this Court by way of the present petition.

6. Mr. Chatterjee, learned Advocate appearing for the petitioner submits that the learned Trial Court has committed a serious error in rejecting the petitioner's application on the ground that the petitioner has not been able to prove that the petitioner's witness is known by two names. It is submitted that at the stage of examining an application for recording of evidence on commission, the Court is not required to go into the question of the identity of the witness who has been cited inasmuch as such aspect would be tested at the time examination of the witness, when the witness would prove his identity.
7. Mr. Ghosh, learned Advocate appearing for the opposite parties submits that the learned Trial Court has passed the impugned order rightly. It is further submitted that the evidence of Ratan Guha (i.e. witness cited by the petitioner) is not required at all.
8. Having heard the learned Advocate appearing for the respective parties and having considered the material on record this Court is of the view that the learned Trial Court should not have disallowed the recording of evidence on commission merely because of lack of document in support of the two names of the witness. It

is apparent from the order impugned that the learned Trial Court had not disbelieved the physical inability of the witness to depose in the witness box. Indeed inability to attend Court on the ground of sickness or infirmity would and should have been the primary consideration for passing an order on the present application under Order 26 Rule 1 of the Code.

9. Any dispute as regards the identity of the witness or his alias would be a matter relating to the examination of the witness and it should not have been made a threshold bar to record evidence on commission under Order 26 Rule 1 of the Code. While on the subject, it must be clarified that it would have been a different matter altogether if the name of the witness mentioned in the application seeking recording of evidence on commission was completely different from the name mentioned in the medical certificate/prescription. In such situation rejection would be justified because there would be nothing to establish that the said witness was sick or infirm but in the present case the application indicates that the witness has two names and one of the said two names matches with the name mentioned in the prescription.
10. Since the question as to whether the person who is being posed/cited as a witness has two names or not, would be verified by the Commissioner before proceeding to record the evidence therefore the learned Trial Court

should not have rejected the petitioner's application at this stage on the ground of non production of documentary proof in support of the relevant witness. The evidence of such witness can be recorded by the Commissioner for such evidence to be considered by the Court, only if the witness is able to show proof that he is known by two names. Furthermore, in any case the identity of the witness will be open to scrutiny during cross examination and also at the stage when the Court would be finally scanning and assessing the evidence along with other facts, recorded by the Commissioner in his report. If the Court is not satisfied as regards the veracity of identity of the witness, the evidence of such witness will not be considered as valid.

11. In such view of the matter the order impugned dated February 7, 2026 stands set aside. The order dated March 24, 2026 also closing the petitioner's evidence is also set aside. The matter is remitted to the learned Trial Court for reconsideration of the petitioner's application under Order 26 Rule 1 of the Code. Since more than four months have passed in the interregnum, the petitioner shall furnish a fresh medical certificate in respect of the petitioner's contention that the said witness is unwell.

12. It is clarified that the learned Trial Court shall appoint a Commissioner for recording evidence of such witness, only if the learned Trial Court is satisfied that the

witness cannot attend Court for the purpose of facing examination and cross-examination.

13. In case the learned Trial Court is satisfied that the evidence of the said witness should be taken on commission then the learned Trial Court is requested to fix short dates so that such recording of evidence of the said witness on commission is done expeditiously. Since the suit is of the year 2007, the learned Trial Court is further requested to expedite the hearing of the suit and conclude the same as expeditiously as possible.
14. It is clarified that the petitioner's application would not be rejected on the ground of the non-production of proof as regards two names of the concerned witness of the plaintiff/petitioner.
15. Accordingly, C.O. 969 of 2026 stands disposed of. There shall be no order as to costs.
16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)