

06.04.2026

Item no. ML 8
Court No. 06

Asraf, A.R.(Ct.)

In the High Court at Calcutta

Civil Revisional Jurisdiction

Appellate Side

Case No.

CO 1003 of 2026

In the matter of :

SMT. ATRAYEE BANERJEE

...Petitioner

VS.

DR. PINAKI MUKHERJEE

...Opposite Party

For the Petitioner :

Mr. Nirmalya Kumar Das

Mr. Jahangir Hossain

....Advocates

1. This revisional application lays challenge to an order dated December 11, 2025 passed by the learned Additional Principal Judge, Family Court, Calcutta thereby the petitioner's application under Order XXVI Rules 1 and 2 read with Order XXVI Rule 4 and Section 151 of the Code of Civil Procedure, 1908 has been rejected.
2. Learned advocate appearing for the petitioner submits that such application was necessitated since the petitioner was unable to attend Court for adducing evidence inasmuch as she was ill. It is submitted that despite the fact that medical document in support of her illness had been annexed to the application, the learned Trial Court has rejected such application without appreciating the grounds made out by the petitioner.

3. Having heard the learned advocate appearing for the petitioner and having considered the materials on record, this Court is unable to find any reason to interfere with the order impugned.
4. The learned Trial Court has considered the medical prescription which is the only document annexed to the petitioner's application under Order XXVI Rules 1 and 2 read with Order XXVI Rule 4 of the Code, and has come to the conclusion that the same does not make out any case for allowing adduction of evidence through commission.
5. The medical prescription which had been annexed to the application under Section 151 of the Code and which forms an annexure to the present revisional application as well (at page 34 thereof) does not reveal that the petitioner was prescribed or advised "bed rest" for even a single day.
6. That apart, the learned Trial Court has found that the petitioner had duly attended the Notary Public at Alipore Judges Court on December 9, 2025 for the purpose of affirming the affidavit in support of the said application and that the prescription that was annexed to it was of a subsequent date. The provisions of Order XXVI Rules 1, 2 and 4 of the Code are not invocable by a litigant or witness

as a matter of right but the same lie within the zone of discretion of the Court. The learned Trial Court has exercised its discretion in a sound manner.

7. In such view of the matter, this Court finds no reason to interfere with the order impugned.
8. Accordingly, the instant revisional application being CO 1003 of 2026 stands dismissed.
9. There shall be no order as to costs.
10. Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Om Narayan Rai, J.)