

Dd 9 06.01.2026

**In the High Court At Calcutta
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CO/163/2025

**GOUTAM BUDDHA DAS
VS
ASHIS KUMAR DAS AND ANR**

Mr. Bhaskar Roy Mahayeya,
Ms. Ambalika Ghosh, Advocates
... .. For the Petitioner

Mr. Bikramaditya Ghosh,
Mr. Ved Rai,
Mr. Mayank Bhandari,
Mr. Vivek Saha, Advocates
... .. For the Opposite Parties

1. Revisional application is directed against Order No. 91 dated July 18, 2025 passed in Title Suit No. 29 of 2013.
2. By the impugned order, learned trial Judge, allowed an application under Order XXVI Rules 1 and 4 of the Code of Civil Procedure, 1908 read with Section 151 thereof. Learned trial Judge, allowed examination of a defence witness on commission.
3. Learned advocate appearing for the petitioner submits that, the earlier application under Order XXVI Orders 1 and 4 of the Code of Civil Procedure, 1908 of the private opposite parties was allowed by the learned trial Judge.
4. Aggrieved by such order, the revisional application was filed being CO 151 of 2023. The revisional application was allowed by the order dated December 3, 2024 by setting aside the order of the learned trial

Judge. He refers to the order dated December 3, 2023 of the High Court.

5. Learned advocate appearing for the petitioner refers to various documents which, the defendants/opposite parties submitted before the learned Single Judge. He submits that, such documents are procured. In any event, such documents do not establish any ground for examining the defence of the defendant on commission.

6. Private opposite parties are represented.

7. In a suit for declaration and injunction, the defendants applied under Order XXVI Rules 1 and 4 read with Section 151 of the Code of Civil Procedure, 1908 for examination of a witness of the defendant on commission. Initially, such application was allowed by order No. 70 dated September 15, 2023 by the learned trial Judge. Aggrieved by such order, revisional application was filed being CO 151 of 2023.

8. The revisional Court by the order dated December 3, 2024 set aside the Order No. 70 dated September 15, 2023 on the ground that, such order did not record satisfaction as to the existence of sickness or infirmity of the witness and, therefore, cannot be construed as valid exercise of discretion by the learned Single Judge.

9. The revisional Court remanded the application for consideration afresh. On the prayer made on behalf of the opposite parties, leave was granted to the opposite parties/defendant to rely upon additional document to establish the factum of infirmity or sickness of the witness.

10. Pursuant to and in terms of the Order dated December 3, 2024, the opposite parties/defendants approached the learned Single Judge, with new

materials for consideration in respect of the application under Order XXVI Rules 1 and 4 of the Code of Civil Procedure, 1908.

11.The private opposite parties/defendants relied upon various certificates issued by Government hospital in order to establish that, the witness of the defendants/opposite parties was suffering from peraplegia. Learned Single Judge considered such material documents and is of the view that medical condition of the private opposite parties was such that, witness of the opposite parties/defendants can be examined by way of a commission.

12.The findings rendered by the learned trial Judge, as recorded in the impugned order, cannot be said to be perverse. There are materials on records namely medical documents to establish that, the witness was suffering from medical condition requiring such witness to be examined on commission.

13.Exercise of discretion by the learned Trial Judge cannot be classified as perverse.

14.In such circumstances, I find no material irregularity in the order impugned warranting interference under Article 227 of the Constitution of India.

15.CO/163/2025 is **dismissed** without any order as to costs.

[Debangsu Basak, J.]