

## ORDERS ON IA-III UNDER ORDER XXVI RULE 9 OF CPC

1. The application is consideration i.e., IA-III is filed by the petitioner under Order XXVI Rule 9 of CPC seeking appointment of commissioner for the purpose of recording evidence of Dr. Sri. Santhosh Kumar P.V., Orthopedic surgeon, Victoria Hospital, Bengaluru.

2. In the memorandum of facts accompanying the IA-VII it is contended that the Dr. Sri. Santhosh Kumar P.V., Orthopedic surgeon, Victoria Hospital, Bengaluru has treated to the petitioner. Hence the examination of the said doctor is very much necessary for the purpose of adjudication of this case. Further it is contended that as such it is just and necessary to appoint a court commissioner to examine the said witness. On these grounds it is prayed that the application be allowed.

3. The learned counsel for the respondent No.2 submitted that the application may be allowed.

4. Heard counsel for the either parties.

5. On careful perusal of present application and the affidavit in support of it, the following points arise for my consideration:

- i. Whether the applicant has made out sufficient grounds to allow the application seeking appointment of Court commissioner for the purpose of recording evidence of Dr. Sri.*

*Santhosh Kumar P.V., Orthopedic surgeon, Victoria Hospital,  
Bengaluru?*

*ii. What order?*

6. This court proceeds to answer the aforesaid points for consideration as under:

*Point No. i : In the affirmative*

*Point No. ii : as per the final orders,*

for the following reasons.

### **REASONS**

#### **POINT No. 1:**

7. At the outset it is relevant to state that the petitioner has moved present application U/O XXVI Rule 9 of CPC seeking appointment of commissioner. Further perusal of Section 75 of CPC makes it clear that court commissioner can be appointed for the purpose of recording evidence of witnesses. It is the subject of various judicial pronouncements. In fact in *Ramkrishna Kulvant Rai v. F.E. Hardcastle & Co. (Pvt.) Ltd.*, reported in *AIR 1963 Mad 103*, the Hon'ble Madras High Court held thus:

*The Court has got a discretion to relax the rule of attendance in Court where the person sought to be examined as witness resides beyond the local limits of the jurisdiction of the Court. This discretion may be exercised even if the person happens to be no other than the defendant....*

*...What can however be stated is that the Court of Nisi prius must act judicially, having regard to all the circumstances of the case, the desirability of the physical presence of the witness in Court to enable it to observe his or her demeanour, and not the unusual fact that convenience and economy of expenses for the applicant may involve his opponent in great inconvenience and considerable expenses.*

The fact that the witness is at Bengaluru makes the decision referred above squarely applicable to the facts of this case.

8. Considering the fact that the contention is that the witness is not residing within the local limits of this court and is a doctor by profession, this court is of the opinion that the applicant has made out sufficient grounds to permit the petitioner to examine the said Dr. Sri. Santhosh Kumar P.V., Orthopedic surgeon, Victoria Hospital, Bengaluru. through the court commissioner. *Wherefore Point for consideration No. 1 is answered in the affirmative.*

9. **Point No.2:**

In view of the finding of this court on Point No.1, this court passes the final order, as under :

**ORDER**

*“The IA-III U/O XXVI Rule 9 of CPC filed by the petitioner is hereby allowed.*

*Consequently the petitioner is permitted to examine Dr. Sri. Santhosh Kumar P.V.,*

*Orthopedic surgeon, Victoria Hospital,  
Bengaluru through court commissioner.*

*The court commissioner fee is tentatively fixed  
at ₹.5,000/- payable by the petitioner.*

*For suggesting name of the advocate for being  
appointed as court commissioner and for filing  
memo of instructions by either side."*

Sd/-  
(AFTHAB.K.)  
Prl. Small Causes Court & MACT,  
Mysuru.

The learned counsel for the petitioner has suggested that Kumari Vinutha N.S., Advocate, Mysuru, Roll No. 3974/2021 be deputed to carryout the commissioner's work and has filed a memo to that effect, the same is taken on record.

The learned counsel for the respondent has submitted no objections to depute Sri. Dinesh H. Patil, Advocate, Davanagere as court commissioner in this case.

Hence Kumari Vinutha N.S., Advocate, Davanagere enroll No. 3974/2021 is present and submits that he has got no objections to be appointed as the court

commissioner as such Kumari Vinutha N.S., Advocate, Hassan enroll No.3974/2021 is deputed as the court commissioner to carryout the commissioner's work as per the orders of this court dated 04.04.2024 passed with respect to IA-III.

Issue commissioner's warrant if orders on IA-III is complied.

Await court commissioner's report.”

Call on 02.05.2025.

Sd/-  
(AFTHAB.K.)  
Prl. Small Causes Court & MACT,  
Mysuru.