

T.S. No. 215 of 2020 (CNR:WBCC 010007712020)  
Present: Smt Sonia Majumdar ,Judge Bench II (W.B. 01128)

Order 37  
16.07.25

Today is fixed for hearing petition u/o 26 Rule 1 read with section 151 CPC filed by the defendant in his counterclaim.

Defendant file haziras.

Ld. Advocate for the defendant submits that the defendant has filed an application u/o 26 Rules 1 and 4 read with section 151 CPC praying for appointment of an Advocate Commissioner for examination of the defendant at his residence at premises no 29/A, Abinash Kabiraj Street, 2<sup>nd</sup> Floor, P.S. Burtolla, Kol – 06. He also submits that due to his old age and several ailments he is unable to move and could not appear before the court and also submits his medical reports and the defendant resides within 6 kms within the jurisdiction of this court.

Perused the said application, photocopies of medical reports as well as the record. Considered.

On consideration of the same, I find that the suit by the plaintiff was dismissed for default and the counterclaim by the defendant is proceeding exparte here. Now at the evidence stage it is the defendants prayer as he is unable to come to court due to his old age and several ailments making him unable to move, so I am of considered opinion that for proper adjudication of the case and for the sake of natural justice, the prayer of the defendant should be allowed.

Considered as above, I am inclined to allow the said application.

Hence it is

Ordered

that the application of the defendant filed on 06.05.2025 u/o 26 Rules 1 read with section 151 CPC stands allowed at the cost of the defendant.

Let Ld. Advocate Sri Dipak Kumar Das be appointed as the Advocate Commissioner for the purpose of evidence of the defendant Tapan Kumar Gupta as per the said application.

Defendant is directed to make payment of a sum of Rs. 6,000/- towards the fees and other incidental expenses of the Ld. Advocate Commissioner at once fixing 09.09.25 for submission of report of evidence of defendant. Writ will be issued after payment of such fees.

D/C by me

Judge

Judge 2nd Bench