

T.S. - 943/12 CNR – WBCC0102584-2012

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 84

14.3.24

Today is fixed for hearing the application of the plaintiff u/o 26 Rules 1 and 2 read with section 151 CPC dtd 15.2.23.

Both the sides file haziras. Defendants file WO against the said application. Copy has been served. Let the same be kept with this record.

Heard the Ld. Advocates for both the sides.

Perused the application whereby the plaintiff has prayed for passing necessary order for appointment of an Advocate Commissioner for deposition for the purpose of recording his evidence on commission on the ground that he, being an octogenarian, is unable to attend the court in person not only on account of his old age but also due to several ailments from which he is at present suffering.

The defendants have resisted and contested the said application through their WO praying for rejection of the prayer of the plaintiff mainly on the ground that the plaintiff has not furnished any single scrap of paper in support of his contention as made in his application.

During the course of hearing the Ld. Advocate for the plaintiff relies upon the copies of Adhar card and medical certificate of the plaintiff in support of the fact that the plaintiff is at present aged about 88 years or so while he is a chronic sufferer of perennial problems which creates difficulty for him to sit, apart from the fact that he has also several cardiac ailments for which he is under regular medical treatment. The said copy of medical certificate also shows that at present the plaintiff has difficulty in movement due to senility and aggravation of his chronic illness.

The Ld. Advocate for the defendants, after going through the copies of the documents relied upon from the side of the plaintiff, submits, out of his fairness, that once the plaintiff has furnished documents in support of his prayer, the said application may be allowed.

The Ld. Advocate for the plaintiff has also relied upon the principles laid down in the reported decision of 2009 0 AIR (Cal) 66 where the Hon'ble High Court at Calcutta has been pleased to observe that “ *Invocation of the provisions of Order 26 Rule 1 of the Code of Civil Procedure, in my opinion, cannot be limited only in respect of sick persons alone. The expression, 'sickness or infirmity', in my view makes it absolutely clear that the court has discretion to issue commission to examine witness who suffers from some sort of infirmity, apart from sickness. The advanced age of a witness can well be construed as a ground of infirmity, on the basis of which the ld Court below can pass an order invoking the provision of Order 26, Rule 1 of the Code of Civil Procedure*”

Considering the factual scenario as detailed herein above in the context of the principles laid down in the aforesaid reported decision, I am of the considered opinion that it is a fit case where commission should be allowed for recording the evidence of the plaintiff. Accordingly I am inclined to allow the instant application.

Hence it is

Ordered

that the application of the plaintiff u/o 26 Rules 1 and 2 read with section 151 CPC dtd 15.2.23 is hereby allowed on contest.

Let Sri Supriyo Dutta (8420636513) Advocate be appointed as the Ld Advocate Commissioner for deposition to record the evidence of the plaintiff at his residence after serving prior notice upon both the sides regarding the date of recording such evidence.

Plaintiff is directed to pay to the Ld. Advocate Commissioner for deposition a sum of Rs. 6000/- on account of his fees and incidental expenses by 19.4.24 Writ will be issued after payment of such fees.

D/C by me

Judge

Judge 2nd Bench