

Order No. 22 dated 16.10.2023.

Today is fixed for hearing of the applications u/sec 7(1)(a), 7(1)(c) and 7(2) of the WBPT Act.

Both parties filed hazira.

The defendant filed an adjournment application together with photocopy of two medical treatment slips issued by Indira Gandhi Institute of Medical Science, Patna, dated 19.08.2022 and 14.04.2023 respectively.

No written examination in chief for the 7(2) application has been filed by the defendant.

Heard. Considered.

Perused the record.

The record suggests that the defendant had entered appearance on 14.10.2022 together with applications u/sec 7(1)(a), 7(1)(c) and 7(2) of the WBPT Act, and thereafter for last 10 consecutive dates and for more than a year he neither is proceeding with the main suit nor any of his applications either u/sec 7(1)(a) or 7(1)(c) or 7(2) of the WBPT Act. Today also he neither did file his written examination in chief for the 7(2) application nor his Ld Counsel proceed with any of his applications either u/sec 7(1)(a) or 7(1)(c) of the WBPT Act. An adjournment application, on the other hand, has been filed annexing copy of the aforesaid prescriptions. One among of those prescription is more than 1 year old and as per that prescription the defendant had no fresh cardiac complaint (clearly written in the fourth line of the prescription by the doctor concerned). As per the prescription his BP and PR both are normal and the medicines that had been prescribed under that prescription are the normal medicines that a senior citizen with heart ailment on account of age does regularly take. The second prescription/ discharge certificate is also six month old and that admission, as the document suggests, was for the purpose of cardio test. The discharge condition as noted in the said document was stable and the medicines advised in the same are the same medicines that had previously been prescribed to him but one SOS pill (Sorbitrate) for emergency cardiac arrest. No fresh documents has been filed to suggest that the defendant has suffered any cardiac arrest or is so much ill that he could not contact his counsel to proceed with the case on his behalf. The documents filed rather suggests that he had contacted his Ld Counsel but for taking adjournment even though no solid ground is available for him. For the purpose of hearing – especially, for 7(1) hearing – the defendant's presence is not at all necessary – particularly when he has engaged two Ld Counsels, who are supposedly experts in law, and therefore, the hearing was supposed to be participated by his Ld Counsel and not him.

So, having regard to all the aforesaid, I have no doubt that the successive adjournment applications which the defendant is filing including the one that has been filed today are not for genuine cause but for delaying both the hearing of 7(1) application as well as the trial of 7(2) proceeding and also the main suit, and therefore, sec 365B CPC clearly gets attracted. I, therefore, do allow the adjournment application but subject to exemplary cost u/sec 35B CPC as well as u/sec 35A CPC @ Rs. 6000/- - 50% of which is payable to SDLC and remaining 50% is payable to the Plaintiff.

The defendant is directed to conclude hearing of the 7(1) WBPT Act application by the next date and to proceed with the trial of 7(2) WBPT Act proceeding i.d necessary punitive order.

Fix 01-12-2023 for filing written examination in chief for the 7(2) application, hearing of 7(1) application and payment of cost i.d necessary punitive order.

D/c by Me.  
Sd/-  
CJJD  
Kurseong.

Sd/-  
Civil Judge (Jr Div)  
Kurseong.