

**Title Suit No. 131 of 2013 (CIS 688 / 2014)**

**Order No. 85 dated 20.04.2024**

Today is fixed for passing order in respect of the petition u/O 26 Rule 1 dated 21.03.2024.

Ld. Advocate for the defendant No.1, has filed a petition for appointment of an Advocate Commissioner to record evidence of defendant No.2, Smt. Bibha Rani Ghosh.

The contention of the Ld. Advocate on behalf of the defendant is that she is an age old lady and suffering from several ailments and pain due to which she can neither walk nor stand or sit too long time. She is also suffering from various kinds of diseases. Her age is about 83 years. Therefore at this juncture it is quite impossible for her to adduce evidence like other normal witnesses before this Court. The defendant is the necessary witness to depose in respect of this case as she is the witness in the impugned gift deed. The defendant undertake to bear the cost of the commissioner. Therefore his humble prayer was that an Advocate Commissioner should be appointed after considering the serious health condition of defendant No.2 and also to cross examine her.

On the other hand Ld. Advocate for the plaintiff raised strong objection.

Heard the petition. Perused the same.

Considered.

Considering all the four arenas of the petition and the intention of the petitioner and also the medical documents annexed herewith, this Court finds no impediment to allow the petition. Thus the petition u/O 26 R 1 dated 21.03.2024 has been allowed.

Hence, it is

**ORDERED**

That the petition u/O 26 R 1 dated 21.03.2024 **for Commissioning witness** is considered and allowed on contest without any order as to the cost.

Let **Biplob Dhara, Ld. Advocate** of this Bar Association, Amta be appointed as witness commissioner in this suit for recording the evidence of defendant No. 2 Bibha Rani Ghosh.

The petitioner is directed to deposit a sum of **Rs.2000/-** in court towards the consolidated cost of the Ld. Commissioner by **24.04.2024**. Writ will be issued on the deposition of the cost.

Commissioner to serve notice upon the parties or to their respective learned advocates before proceeding to the respective suit premises.

Commissioner to file his report by next date positively.

Fix 10.05.2024 for commissioner's report.

Dictated & corrected by me

CJ

Civil Judge (Jr.Div.)  
Amta, Howrah