

O.S. 39 of 2015
Computer No.O.S. 12 of 2015

Order No. 32
Dated. 05.02.2018

Petitioner and respondent both filed hazira. Ld. Advocate for the petitioner also filed medical prescription of witness Sukumar Das as directed by this court on 24.01.2018 for deciding the application under order – 26 Rule – 1 of CPC filed by the petitioner.

Ld. Advocate for the petitioner submits that he is producing the medical prescription of witness Sukumar Das issued by Dr. Soumick Mondal - BHMS as directed by the Ld. Court. He further submits that this report prove that witness Sukumar Das is not capable of coming to this court within thirty days as advised by the doctor. He specifically draws the attention of this court on the last page of the medical prescription where it is mentioned that the patient is advised to fat free and protein free diet and also rest for minimum thirty days from 03.02.2018. In the above circumstances, on the basis of this medical prescription he prays for allowing of the application under order -26 Rule 1 CPC as filed by the petitioner.

Ld. Advocate for the respondent submits that the three pages medical prescription is merely a health detail of Homeopathy doctor which is not giving light on the physical condition of Sukumar Das regarding his movement which will help the court in deciding the present application. Moreover, Ld. Advocate for the respondent submits that this is not a medical report issued by any MBBS doctor but is only a medical prescription issued by Homeopathy doctor. Apart from that his medical prescription reflects that this Homeo Clinic is situated at far more distance from the house of the witness Sukumar Das. Therefore, he said that if the witness is unable to walk how could he cover that long distance. As such, he prays for rejection of that application being malafied one.

Heard the submission of both sides and after perusing the medical prescription of witness Sukumar Das, I find that this witness is avoiding to come before this court to adduce evidence. Further more the medical prescription does not reflect that witness Sukumar Das is unable to move. Apart from that if the witness can visit the medical clinic far from his house

he can also come before this court to adduce evidence. As such, considering all these aspects, in consider view this medical prescription cannot be relied upon.

Hence, an application under order – 26 rule 1 of CPC read with section -151 of CPC filed by the petitioner stands rejected.

Fix 20.03.2018 for evidence.

D/c

Additional District Judge,
2nd Court, Bongaon, North 24 Parganas