

EJECTION SUIT NO. 118 OF 2005 [476/2014]
C. N. R. NO. WBPS01-001876-2005
Before Sri Sridhar Chandra Su, Ld. Judge, 5th Bench.

ORDER NO. 120 DATED 28.06.2022

Today is fixed for passing order.

Parties file their respective haziras.

The record is taken up for passing order.

Defendant has filed a petition under Or.XXVI R.1 read with Sec.151 of C.P.C. In the said petition, it is mentioned by the defendant that Id. Advocate Commissioner may kindly be appointed for taking evidence of the defendant in the suit premises and prayed for passing necessary order.

Plaintiff has filed written objection and stated that the petition under Or.26 R.1 read with Sec.151 C.P.C. is not maintainable. That the defendant did not mention about the nature of illness in the petition and further stated that the Doctor advised the defendant for physical exercise and he has gone to his native place in the state of Bihar. He is unable to move and is bed ridden. Such type of plea is false and fabricated one.

Ld. Advocate on behalf of the defendant has filed affidavit in opposition to the written objection of the plaintiff. In the said objection, defendant has mentioned that “.....I say that the defendant has gone to Bihar for mental peace with great difficulties and if required, he may be examined in Bihar.....”.

Ld. Advocate on behalf of the defendant submitted that the defendant is bed ridden and he is not in a position to come before this court for adducing evidence. In this connection, he has filed the present petition for appointment of Commissioner for taking the evidence in his own house.

From the xerox copy of the prescription filed by the defendant, therefrom found that those documents are dated 21.01.2021 and thereafter, defendant has not filed any medical paper in support of his ailment. On the other hand, defendant, in his affidavit in opposition, admitted that the defendant went to his native place at Bihar from Kolkata.

Considering the above context, defendant only to dragging the suit and to avoid to come before this Court for adducing evidence, filed the present petition and the said petition is not tenable and it be rejected.

Hence, the petition under Or.XXVI R.1 read with Sec.151 of C.P.C. filed by the defendant is hereby rejected on contest.

Fix 13.07.2022 for evidence of the defendant.

Defendant is directed to produce the witness on the date fixed.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]
J.O. Code No. WB-00-620.