OD-44 & 45

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

CS/124/2011

UMADEVI AGARWALLA & ORS.
-VS-
NIRMAL KANODIA & ORS.

CS/264/2012
IA No.GA/3/2023

SRI NIRMAL KANODIA & ORS.
-VS-
UMADEVI AGARWALLA & ANR.

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : December 11, 2023.

Appearance:
Ms. Urmila Chakraborty, Adv.
Mr. Amit Meheria, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Amrita Das, Adv.
... for the plaintiffs in CS/124/2011 and defendants in CS/264/2012

Mr. Sukrit Mukherjee, Adv.
Mr. Tanuj Kakrania, Adv.
Mr. Karanjeet Sharma, Adv.
... for the defendants in CS/124/2011 and plaintiffs in CS/264/2012

The Court: Ms. Urmila Chakraborty, learned counsel, is appearing for the plaintiffs in CS/124/2011 and defendants in CS/264/2012.

Mr. Sukrit Mukherjee, learned counsel, is appearing for the defendants in CS/124/2011 and plaintiffs in CS/264/2012.

Plaintiffs' witness is present. Cross-examination of the plaintiffs' witness no.1 resumed today and concluded. He is discharged.

Counsel for the plaintiffs submits that she will not adduce any further witness.

Accordingly, evidence on the side of the plaintiffs is closed.

The defendant has filed an application being GA/3/2023 praying for appointment of a Commissioner for conducting examination of the witness, namely, Nirmal Kanodia who is the defendant no.1 in CS/124/2011 and plaintiff no.1 in CS/264/2012.

Counsel for the defendants submits that the witness, Nirmal Kanodia is aged about 71 years and is also suffering from various ailments and it is not possible for him to appear before this Court to adduce evidence and prays for appointment of an Advocate Commissioner for holding examination of the witness on commission.

Counsel for the plaintiff raises objection and submits that from the medical documents submitted by the witness on 9th August, 2023 it reveals that the Doctor had advised for rest only for two months and now two months has been completed and the witness can very well appear before this Court to adduce evidence.

Considered the submission made by the learned counsel for the respective parties.

Perused the application and the documents submitted by the witness.

This Court finds that the witness is 71 years old and also suffering from various ailments and as such it is proper to appoint one Commissioner to examine the said witness on commission at his residence.

In view of the above, Mr. Nirmalya Dasgupta, learned advocate is appointed as Commissioner for examination of Mr. Nirmal Kanodia on commission at his residence at 1001 A, Eastern Metropolitan Bypass, Kolkata.

The remuneration of the Commissioner is fixed at Rs.20000/- per sitting which shall be borne by the defendants.

The Commissioner shall inform the date of examination of the witness on commission to the Assistant Registrar of this Court so as to enable the Officer of this Court to produce the documents before the Commissioner at the time of examination of the witness on commission.

The Commissioner is directed to complete the examination of the witness on commission within six weeks from the date of the receipt of the order.

The Commissioner is directed to submit the report on 31st January, 2024.

GA/3/2023 is disposed of.

(KRISHNA RAO, J.)

RS