

(2018) 08 CHH CK 0096
Chhattisgarh High Court
Case No: WP227 No. 675 Of 2018

Mohammad Aslam Khan And Ors

APPELLANT

Vs

Ghulam Qadar Khan And Ors

RESPONDENT

Date of Decision: Aug. 7, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Order 26 Rule 9

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Rajeev Bharat, SRJ Jaiswal

Final Decision: Disposed Of

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the order dated 02.07.2018, passed by the IIIrd Civil Judge, Class-II, Raipur, whereby an application preferred by the petitioner/defendant under Order 26 Rule 9 CPC to examine the witness namely Sofiya Begum, W/o Iqbal Ur Rehman, has been dismissed.

3. Learned counsel for the petitioners submits that the witness proposed to be examined is aged about 75 years and is ailing and the learned Court below without any rhyme or reason only for the reason that the application is not supported with any document with regard to medical condition has dismissed the same.

4. Perused the order. As has been submitted before the Court that still the evidence is going on and the plaintiff evidence is going on, under the

circumstances if the defendant witness is sought to be examined by the Commissioner, in the opinion of this Court, no prejudice would be caused as

certainly the age of 75 years cannot be ignored. In a result, the order dated 02.07.2018 is set aside. The application filed by the petitioner/defendant

under Order 26 Rule 9 CPC to examine the witness on commission is allowed. The learned Court below shall appoint a Commissioner to get the

witness examined and will proceed accordingly in due course.

5. With such observation, the petition stands disposed of.