

**Appellant Vs. Respondent**

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**SooperKanoon Citation :** [sooperkanoon.com/1059867](http://sooperkanoon.com/1059867)

**Court :** Kolkata

**Decided On :** Mar-06-2012

**Judge :** Maharaj Sinha

**Appellant :** Appellant

**Respondent :** Respondent

**Judgement :**

1 G.A.No.19 of 2012 G.A.No.3310 of 2011 EOPLA No.2 of 2011 IN THE HIGH COURT AT CALCUTTA TESTAMENTARY INTESTATE JURISDICTION ORIGINAL SIDE Present: The Honble Mr.Justice Maharaj Sinha.

DR.

NARENDRA KOHLI -VRATAN MAROTHIA For the Petitioner: Mr.Pradip Dutta, Sr.Adv.Mr.Sanjib Dawn, Adv.For the Respondent: Mr.Mr.Mr.Mr.Utpal Bose, Adv., Dhruva Ghosh, Adv., P.K.Bagaria, Adv., J.

Chatterjee, Adv.Judgement on:

06. 03-2012.

This is an application of Ratan Marothia (the petitioner, in short).who is contesting a probate proceedings in this Court as the defendant, primarily for appointment of an advocate of this Court as Commissioner for examination of one

MRS. Jacqueline Wilson and her son, Mr. Anthony Wilson also known as Toby Wilson (Toby, in short). or rather for recording the evidence of the said Wilsons at their residence in Spain on such terms and conditions as this.

Court may deem fit and proper.

The other incidental or consequential prayer contained in Prayer (b) of the petition need not be quoted in detail.

The case of the petitioner as made out in his petition appears to be that the respondent herein, Dr.

Narendra Kholi (respondent, in short) being the executor of a Will of one Helen Wilson, since deceased, initiated the above probate proceedings in the City Civil Court at Calcutta for obtaining probate of the Will of Helen Wilson, the testatrix, which as I have said above, was brought to this Court from the City Civil Court.

The said Will, it is alleged, is a procured document and the respondent brought the said Will into existence by exercising undue influence and coercion on the testatrix. The respondent is also one of the tenants of the premises No.6, Chowringhee Lane, Calcutta which is the subject-matter of a suit instituted by the petitioner.

The petitioner, it appears. instituted the said suit for specific performance before the probate proceedings was initiated and during the life time of the said testatrix, Helen Wilson as she wrongfully and illegally terminated the said agreement.

The testatrix, Helen Wilson was the mother of two sons, namely Norman William Wilson and Kenneth Arthur Vardon Wilson who were two witnesses of the said agreement for sale on the basis of which the petitioner herein instituted the said suit for specific performance.

The petitioner has narrated his part of the story in the petition that the said two sons, Norman William Wilson and Kenneth Arthur Vardon Wilson (in short, Norman and Kenneth respectively). who were living abroad, namely in Australia and Spain respectively, came to India with their respective wives to witness the

execution of the said agreement for sale by their mother in favour of the petitioner.

Kenneth, the younger son of Helen Wilson allegedly gave consent for grant of probate of the said Will of Helen Wilson in favour of the respondent and that consent was given by Kenneth also on behalf of his elder brother, Norman.

According to the petitioner, the Will of Helen Wilson is a sham document.

and by executing the said Will in favour of the respondent and his wife, Rita Kohli, she in fact, wanted to sell the said property to the respondent with the sole object of paying the proceeds thereof to her said two sons at their respective places of residence in Australia and London. The respondent, however, did not pay any money to Helen Wilson and this according to the petitioner will be substantiated by several E-mails exchanged between Kenneth Wilson and the respondent and such E-mails were sent from the present residence of Kenneth in Spain through his sons E-mail ID., namely Toby.

Since the respondent did not make the payment for the said property for which the said Will was executed by Helen Wilson, Kenneth contacted the petitioner and disclosed these facts and agreed to sell the said property in terms of the said agreement for sale by and between the petitioner and Helen Wilson.

After the above agreement Kenneth had forwarded the said Emails, addressed by him to the respondent, to the petitioner.

In paragraph 14 of the petition it is stated that since the consideration for the purported Will failed and Kenneth thereafter agreed to sell the said property to the petitioner in terms of the said agreement for sale, Kenneth executed a terms of settlement.

which was filed in Suit No.576 of 1990.

Apart from the above suit the petitioner had instituted a suit, Suit No.11 of 1994 in this Court against the respondent challenging the legality and validity of the said Will and claiming a decree for cancellation of the Will.

For the purpose of the petitioners respective cases made out in his two suits, one for specific performance and one for cancellation of the Will, the petitioner was advised that the evidence of Kenneth.

was very important as witness as Kenneth could explain as to why such terms of settlement had been filed by him though on earlier occasion Kenneth had consented to the grant of probate of the said Will of Helen Wilson in favour of the respondent and his wife.

The petitioner tried to contact Kenneth in Spain and came to knot that due to Kenneths physical condition he would be unable to attend the Court in India for giving evidence.

[Paragraph 18 at page 7 of the petition].The petitioner thereafter, inter alia, made an application for a commission for the examination of Kenneth and the said application was ready to be heard after the affidavits were used by the parties, namely the petitioner and the respondent as a contested matter on 20 December 2011.

However, the petitioner came to knot on 19 December 2011 that Kenneth, in fact, died on 3 December 2011 and as such the petitioner could not proceed further with the application for issue of commission.

The petitioner also came to knot that Kenneth died intestate living behind him his wife, the said MRS.Jacqueline Wilson and the only son, Toby Wilson.The petitioner also came to knot from the wife and son of Kenneth that due to ill health of Kenneth it was not possible for him alone to negotiate with him in Calcutta from Spain regarding the payment of the consideration money for the Will purportedly executed by MRS.Helen Wilson.

in favour of the respondent without the help of his wife and his son namely, Jacqueline and Toby in dealing with the respondent.

According to the petitioner the financial condition of Kenneth became so miserable that Kenneth and his family had to depend on the commitment of the respondent for payment of the consideration amount for the said Will left by Helen Wilson.

Both the wife and the son of Kenneth therefore are presently aware of the entire incidents which had taken place right from the date of execution of the said agreement for sale by Helen Wilson in favour of the petitioner till the Kenneths death.

On the above facts the petitioner was advised that the wife and the son of Kenneth might be material witnesses for the petitioners case and as such they should be examined.

The petitioner made the present application as the petitioner was told by the wife and the son of Kenneth that they were unable to attend the Court in India for giving their evidence as the wife of Kenneth has been suffering from Arthritis.

and she cannot walk.

and on top of that Jacqueline has to look after.

her 90 years old mother.

Kenneths son, Toby cannot also come as he looks after the two old and ailing ladies, namely his grandmother and his mother.

The evidence of both Jacqueline and her son Toby who are the only heirs and legal representatives of Kenneth, according to the petitioner is very much necessary.

and since both Jacqueline and Toby are not in a position to attend the Court in India to give evidence the order or rather orders as prayed in this application for issue of commission should be made.

In opposing the application Mr.Utpal Bose, learned Counsel appearing on behalf of the respondent has primarily said that the evidence of Jacqueline and Toby is not at all necessary as they had nothing to do with the case of the petitioner including his defence set up in his written statement to contest the probate proceedings initiated by the respondent for obtaining probate of the Will of Helen Wilson.

However, if for any reason the Court is of the opinion that it should issue commission as prayed for, then and in that event, the petitioner should bear all the expenses of the respondent and his Counsel to enable them to attend the commission for the purpose of cross-examination of the said two witnesses of the petitioner and properly defending the suit.

Mr. Pradip Dutt, Learned Senior Counsel appearing in support of the application of the petitioner had drawn my attention to the relevant rules of Order 26 of the Code of Civil Procedure, namely Rule 1, Rule 5 and Rule 15 thereof and said that the facts and circumstances of the present case are such that the Court should issue commission to examine the said witnesses of the petitioner. He further said relying on the provisions of Rule 15 of Order 26 that under Rule 15 the petitioner would be obliged only to bear the expenses of the commission and as such he would be prepared to pay for such expenses as provided in Rule 15 of Order 26 of the Code.

The petitioner, however, on a proper interpretation of Rule 15 of Order 26, submitted Mr. Dutt, would not be liable to bear the expenses of the respondent's counsel as Rule 15 does not impose such obligation on the petitioner at all. In support of the above submissions, Mr. Dutt relied on the following authorities: 1) Kanji Karsondas & ORS. V- Nathubhai Khimji, AIR 1953 Bombay 390;

2) The Tata Iron & Steel Co. LTD. V- Kader Ibrahim Rowther, AIR 1955 Madras 654;

3) Maremanda Seshamma V- Jooluri Narasimha Rao & Ors., AIR 196 Andhra Pradesh 167;

4) Lachmi Devi V- Chandrakala Saraogi & Anr., AIR 197 Patna 155;

5) M/S. Filmistan Private Ltd., Bombay V- M/S. Bhagwandas Santprakash & Anr., AIR 197 Supreme Court 61.

In Kanji Karsondas & ORS. (supra) speaking on behalf of the Division Bench of Bombay High Court his Lordship Justice Gajendragadkar, as his Lordship then was, said the words used are the expenses of the commission.

and No.the costs of the commission.

Section 35, for instance, refers to the costs of the suit, and in exercising its jurisdiction under Section 35 it would no doubt be competent to the Court to make an order as to the costs not only of the suit as such, but other costs incidental to the suit.

Rule 15 of Order 26, does not, however, use the word costs.; but it speaks of the expenses of the commission.

In our opinion this expression has been deliberately used because in the context Rule 15 is intended to provide for the deposit of the expenses of the Commissioner and other expenses directly attributable to the issue of the commission.

It is not all costs resulting from the issue of the commission which are intended to be deposited by the party under Rule 15 of Order 26.

It is only the expenses of the commission which have to be deposited by him.

These expenses would normally be the fees to be paid to the Commissioner and the other out of pocket expenses which may have to be incurred to secure the presence of the witnesses before the Commissioner.

In other words, this expression cannot, in our opinion, be extended to include costs of the opponents pleader or the costs which the opponent himself may have to incur to go to the place where the Commissioner is going to examine the witnesses in question.In Tata Iron & Steel Co.LTD.(supra).the Division Bench of the Madras High Court held that the expression used in Order 26 Rule 15 i.e.expenses of the commission.

did not include expenses of the respondent and the Court had no inherent power to travel outside Order 26, Rule 15 and impose conditions not warranted by such provision or any other specific statutory provisions in that regard.

If the Court had imposed conditions on the petitioner for bearing the expenses of the respondent that would really be tantamount to passing an interim decree for

costs which could not be sustained under any provision of the Code.

The Division Bench as is evident in paragraph 9 of the judgment made it very clear that where there is an express provision in the Code (as in Order 26 Rule

15) setting out the condition that might be imposed it would not be open to any Court to resort to its inherent powers in order to enlarge its powers or get over the statutory limitations. The other two judgments of the Honble Judges of Andhra Pradesh and Patna High Court in *Maremanda Seshamma (supra)* & *Lachmi Devi (supra)*. in interpreting the scope of Order 26 Rule 15 merely followed the ratio of the above two Division Bench judgments of Bombay and Madras High Courts and said that the Court in exercise of its power under Order 26 Rule 15 had no jurisdiction to direct the party applying for issue of commission to bear the expenses of the respondent or the opposite party.

However, the Supreme Court in *M/S. Filmistan Private LTD. (supra)* said in no uncertain terms that the power exercised by the Court under Section 75 and Order 26 Rule 5 of the Code of Civil Procedure is discretionary.

The Supreme Court in the case before it, however, did not interfere with the order under appeal as the Supreme Court found that no case was made out for interfering with the discretion of the learned Trial Judge. In deciding the case the Supreme Court as the Judgment suggests did not have to deal with the provisions of Order 26 Rule 15 of the Code.

In opposing the petition for issue of commission, learned Counsel, Mr. Utpal Bose primarily raised two objections, one was, that no case was made out by the petitioner in the petition for an order for issue of commission in the fiRs. place and secondly, in any event, if the Court is of the opinion that it should issue commission as sought by the petitioner for recording the evidence of the persons concerned in Spain then and in that event the petitioner should bear the expenses of at least two counsel and the advocate-on-record of the respondent in addition to the expenses of the respondent himself for attending the commission for effective cross-examination of the persons who are to be examined by the petitioner in Spain.

After dealing with the statements made in the petition Mr. Bose, however, said that the petitioner was unable to demonstrate as to why the evidence of the two persons in Spain would be necessary to support the defence set up by the petitioner in his written statement filed by him to contest the probate proceedings.

Mr. Bose also had relied on some authorities in support of his second objection that if for any reason an order for commission is issued by the Court then the expenses of the respondent, as mentioned above, should be borne by the petitioner. The following decisions were relied on: 1) Panchkari Mitra V- Panchanan Saha & Ors., AIR 192.Cal 971;

2) Octavious Steel Co.LTD.V- Endogram Tea Co.Ltd., AIR 198.Cal 78;

3) Filmistan PVT.LTD.Bombay V- Bhagwandas Sant Prakash & Anr., AIR 197.SC 61;

4) Adhir Chandra Banerjee V- Smt.

Lilabati Mukherjee, AIR 199.Cal 296;

5) In Re: Srinivasalu Naicker V- Unknown, AIR 195.Mad 179;

6) Dutch Optalmic Research Centra V- Ultramed PVT.Ltd., AIR 200.Raj 215;

7) Arvind Kumar Mahaveer V- Arvind Exports (P) LTD.Bombay, AIR 199.AP 28..

As far as the fiRs objection of Mr. Bose is concerned that the petitioner has failed to demonstrate why evidence of the persons named in the petition is necessary, it is, I find, extremely difficult to say at this stage of the proceedings that the persons named in the petition as witnesses of the petitioner are not necessary witnesses or their evidence will not, in any way, support or substantiate the defence of the petitioner set up by him in his written statement for contesting the probate proceedings.

If the petitioner had been able to present the two witnesses named in the petition in Court for giving their evidence to support the defence of the petitioner in the probate proceedings, it would have been extremely difficult if not impossible for the

Court not to allow such witnesses to give evidence in Court holding before commencement of the trial that the evidence of the two witnesses would be unnecessary, or not necessary to support the defence or the case of the petitioner as made out by him for contesting the probate proceedings.

However, having regard to the statements made in the petition, at this stage, I am not prepared to hold that the evidence of the two persons named in the petition would not be necessary.

The question, however, arises if the commission, as prayed for, is issued for recording the evidence of the persons concerned in Spain then should the respondent be directed to bear his own costs or the expenses including the costs of his Counsel to attend the commission for cross-examination of the witnesses of the petitioner in Spain.

In the above decisions, the Division Bench of the Bombay High Court and Madras High Court opined that the Court in exercising the power under Order 26 Rule 15 of the Code was not empowered to direct the party applying for commission to bear the expenses of the opposite party or the respondent.

In the present case the expenses to be incurred by the respondent to attend the commission for cross-examination of the witnesses concerned would be quite substantial.

There is no doubt, however, that the respondent has the right to cross-examine the witnesses who are to give evidence in Spain on commission or rather before the Commissioner to be appointed by this Court in support of his case for obtaining probate of the Will in question.

The above judgments cited on behalf of the petitioner, no doubt, construed the provisions of Order 26 Rule 15 of the Code rather strictly.

The judgments proceeded on the basis that since there was nothing provided in Order 26 Rule 15 for meeting the expenses of the respondent or the other side than the expenses of the commission the Court was powerless to direct the party applying for commission to bear the expenses of the respondent, the defendant, or

the other side, as the case may be, for attending the commission for the purpose of cross-examination of the witness or witnesses concerned.

The Division Bench of the Madras High Court in Tata Iron & Steel Company (supra) said in no uncertain terms that where there is an express provision in the Code setting out the conditions that might be imposed, it would not be open to any Court to resort to its inherent powers in order to enlarge its power or to get over the statutory limitations. The subsequent decisions of the learned Single Judges also adopted the view expressed by the Division Bench and said that the Court had no inherent power to travel outside Order 26 Rule 15 of the Code and impose conditions not warranted by that or any other specific statutory provisions in that regard.

The above cases, however, did not have to deal with a case or the facts with which I am concerned in this case.

The petitioner is seeking a commission for recording the evidence of his two witnesses whose evidence according to the petitioner is necessary primarily on the ground of inability of the witnesses or the persons to come and give evidence in Court in India.

The witnesses concerned live permanently in Spain.

If it is held that in a situation like this the Court is powerless to direct the petitioner who has applied for issue of commission to bear the expenses of the respondent or the other side then and in that event the respondent would be compelled to meet the substantial expenses of travelling abroad for cross-examination of the witnesses which the respondent has the right to do even though the respondent cannot afford to meet or bear such expenses.

If the provisions of Order 26 Rule 15 are construed rather strictly then the Court would also be powerless to direct the petitioner applying for issue of commission to bear the expenses of the respondent even when a second application is or successive applications are made by the petitioner for commission for recording the evidence of the necessary witness or witnesses living or residing in any part of

the world to enable the petitioner to prove his case or to defend himself effectively in any proceedings.

So on the one hand, there is no restriction upon the party applying for issue of commission more than once, he may for the purpose of recording evidence of the witnesses situated other parts of the world approach the Court with successive applications and the Court in such cases can only direct the party applying for such commission to bear the expenses of the commission that may be issued for recording evidence of the witnesses in any part of the world and not the expenses to be incurred by the respondent for attending the commission, or to appear before it for the purpose of cross-examination of the witness or witnesses concerned.

The respondent in such cases has to wait till the decree is passed and costs of the suit are assessed by the Court in the end.

Even then it is not certain that the respondent will recover the costs incurred by him for the purpose.

There may well be a case where a respondent is unable to afford the costs or expenses at all for attending the commission abroad.

Would not in that case the respondent be compelled to give up his cause of action or defence, as the case may be, by the Court, or the act of the Court.

If it is held that the Court is powerless to direct the party applying for commission to bear the expenses of the respondent in a given case though it appears to the Court that the costs or expenses for attending the commission or appearing before it should be borne by the party applying for issue of commission in the facts and circumstances of the case, then and in that event the Court, in my opinion, would not be able to do justice to the parties merely on the ground that the Court lacks the authority to invoke its inherent jurisdiction because of a specific provision in the Code itself and thus compel the party affected by the order of the Court to suffer indefinitely for no fault or default on his part.

The Division Bench of the Andhra Pradesh High Court in Arvind Kumar Mahaveer V- Arvind Exports (P) LTD. Bombay, AIR 199.AP 280. in my opinion, has provided

the answer to the above situation.

The Court after considering all the relevant decisions including the Division Bench decision of the Madras High Court in Tata Iron & Steel Company LTD.(supra).said that it agreed with the Division Bench of the Madras High Court in Tata Iron & Steel (supra) that the expression expenses of the commission used in Order 26 Rule 15 could not reasonably be extended to mean and include the expenses of the other side.

It meant the expenses of the commission only.

But the Court dealt with the above important question as to whether the Court was powerless to make such a direction in spite of its inherent power, namely direction upon the party applying for commission to bear the expenses of the respondent or the other side when such direction would be necessary to do justice to the parties.

The Division Bench in the above case after considering the provisions under Section 151 of the Code of Civil Procedure and the judgment of the Supreme Court in Manohar Lal V- Seth Hiralal, AIR 196.Supreme Court 527 recognised and affirmed that the Court does have the power, in appropriate cases, to direct the party applying for commission, to pay the expenses of the opposite side as a condition for appointing the commission.Then the Court after considering the facts of the case before it including the plea of the respondent that the respondent would not be in a position to cross-examine the witness concerned at all who was in Bombay if his expenses were not directed to be paid by the other side, said that it was not possible to ascertain whether the plea of the respondent in that case that he could not afford to go to Bombay was correct or not but the Court assumed that the plea was true and then said what should happen?.

Should the Court be held to be powerless in the matter, and should the plaintiff be allowed to suffer prejudice because he is not in a position to bear the expenses for attending the commission along with his advocate and stay there for the purpose of cross-examination of the witness concerned.

After considering the above, the Court, however, held if a party who applies for appointment of a commission wants such facility, he must be prepared to bear the expenses of the other side, in an appropriate case.

Otherwise, he must bring his witness to the Court and examine him there in the usual course. Under what facts and circumstances a litigant will be asked to bear the expenses of the opposite party or the respondent will depend on the facts and circumstances of each case but the Court will definitely exercise such authority or power where the interest of Justice does require such a direction.

On the basis of the reasons given in the judgment the Court held that the Civil Court does have the power in exercise of its inherent powers to direct in appropriate cases that the party applying for appointment of a Commission to examine a witness at a distant place should deposit such amount.

as the Court would specify to meet the expenses of the other side.

I respectfully agree with the view expressed by the Division Bench of the Andhra Pradesh High Court in Arbind Kumar (Supra) for doing justice to the parties before me.

I am also of the opinion that the provisions of Order 26 Rule 15 of the Code should not be regarded as exhaustive and the strict grammatical construction of such provisions may often lead to injustice to the parties.

For my present purpose, I am prepared to and do read and apply the provisions of Order 26 Rule 5, Order 26 Rule 15 and Section 151 of the Code of Civil Procedure combinedly.

I say this, however, keeping in view the recent Supreme Court decision in K.K.Velusamy VPalarisamy, (2011) Vol.

11 SCC 27. where the Supreme Court had the occasion to redefine the scope of Section 151 of the Code of Civil Procedure.

In the present case, however, it is also very difficult to say with absolute certainty that the respondent can and should afford its own expenses for attending the

commission for the purpose of cross-examination of the witnesses concerned.

I do not think it is for me to embark upon an enquiry as to the financial abilities of the respondent for meeting the expenses to be incurred by him for travelling abroad with his counsel and the advocate-on-record for the purpose of effective cross-examination of the witnesses concerned.

The expenses or costs, I repeat, are no doubt substantial.

In *Octovious Steel & Company LTD.V- Endogram Tea Co.Ltd.*, AIR 198.Calcutta 78 after considering the application for issue of a commission abroad the Court ordered the petitioner applying for commission to bear the expenses of three counsel of the other side though in that case the parties to the proceedings were financially quite solvent.

Mr.Dutt, however, in his usual fairness without prejudice to the stand taken by the petitioner in the petition in support of such stand said that the petitioner would be ready to bear the expenses of one counsel for the purpose of attending the commission in Spain, the expenses, namely the costs of the air fare and his stay in Spain for appearing before the commission on behalf of the respondent for cross-examination of the witnesses concerned at the fiRs.instance.However, since I am of the opinion that the Court does have the power in an appropriate case to direct the petitioner applying for issue of commission to bear the cost or expenses of the respondent or rather the respondents counsel or advocate including the respondents advocate-on-record and that power has not, in any way, been curtailed or restricted by the provisions of Order 26 Rule 15 or any other provisions of any other order and/or rule of the Code, there will be an order in terms of prayers (a) and (b) of the petition.

Mr.Manish Chandra Roy, learned advocate of this Court is appointed as Commissioner to take evidence of the witnesses mentioned in prayer (a) of the Notice of Motion.

Mr.Sumit Das Sarkar, an Assistant Registrar of this Court will accompany the Commissioner for the Commissioners assistance and the Officer will keep in his

custody the relevant records of the proceedings and act on the basis of the directions of the Commissioner as and when made by him.

However, the petitioner, needless to mention, will bear the cost of the commission including the officer of this Court and accordingly deposit either the entire cost of the commission in Court, namely with the Registrar, Original Side or bear all the costs therefor himself.

The petitioner is also directed to bear the costs of travel and stay of two Counsel and the advocate-on-record of the respondent in Spain for appearing before the commission for cross-examination of the witnesses concerned.

The petitioner, therefore, will either deposit the approximate costs to be incurred on account of travel and for stay in Spain of two Counsel and the advocate-on-record of the respondent either with the advocate-on-record of the respondent or make the necessary arrangements for the purpose before the Commissioner proceeds to hold the commission in Spain.

The Commissioner before leaving for Spain will hold a meeting and arrange in consultation with the Officer of this Court and the representatives of the petitioner and the respondent the programme for holding the commission in Spain and as to whether in addition to the assistance of an Officer of this Court as above a competent stenographer of this Court should also accompany him for recording the evidence of the witnesses at the commission or the petitioner will arrange for a competent stenographer in Spain for the purpose and pay his remuneration.

The commission is made returnable on 2 May 2012.

It is made clear that before the Commissioner leaves for Spain to hold the commission the petitioner will pay to the Commissioner for the time being 2,000 GMs as his remuneration.

The final remuneration of the Commissioner will be ordered to be paid to him after the Commissioner files his report in Court.

Needless to mention that the cost and expenses to be borne by the petitioner by virtue of this order will be subject to the result of the suit.

Further, as prayed for by the petitioner by way of his supplementary affidavit affirmed on 24 February 2012 with the leave of the Court, the evidence to be given by MRS. Jacqueline Wilson and her son, Anthony Vardon Wilson alias Toby Wilson as the plaintiffs witnesses on commission will also be treated as their evidence de bene esse.

in suit No.576 of 1990 and suit No.11 of 1994 instituted by the petitioner in this Court.

The costs of this application will be cost in the cause.

Liberty to mention.

The prayer for stay of Mr.Utpal Bose, learned counsel appearing on behalf of the respondent is unhesitatingly refused.

Urgent certified photocopy of this Judgment, if applied for, be given expeditiously.

[MAHARAJ SINHA, J.].

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