

Assam Schedule VII. Form No. 143
HIGH COURT FORM NO. (J) 13
Form of Order Sheet

DISTRICT- SONITPUR

IN THE COURT OF MUNSIF NO. 1, SONITPUR, TEZPUR
PRESENT : Sri. V. Bhuyan.

Misc(J) Case No. 217/22
(I/c-TS Case No. 91/12)

-V/S-

Sl No. of Orders	Date	Order	Signature
	09-11-22	<p>Both sides are represented.</p> <p>Today is fixed for order.</p> <p>Heard the Ld. Counsels on behalf of both the parties on the last date fixed.</p> <p>Ld. Counsel on behalf of the OP has relied on two judgments of Hon'ble Supreme Court-</p> <p>I) 2021 Legal Eagle (SC) 993.</p> <p>II) 1963 Legal Eagle (SC) 266 or 1964 AIR(SC) 993.</p> <p>Ld. Counsel on behalf of the petitioner has relied on five judgments-</p> <p>I) 2021 (3) GLT 196</p> <p>II) AIR 2001 SC 1440</p> <p>III) 1997 L. Eagle (Del) 467</p>	Contd..

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IV) 2000 L. Eagle (S.C) 1583 (2000(8) SCC 532)

V) 2017 L. Eagle (CNH) 101.

I have bestowed my anxious consideration as to the arguments made by the Ld. Counsels appearing on behalf of both the sides on the last date fixed.

The Ld. Counsel on behalf of the defendant has filed a instant petition no. 3156/2022 praying for allowing them to adduce evidence of Sheristadar of this Court U/o 18 Rule 2 R/w Section 151 CPC. The defendant/petitioner has cited Covid-19 pandemic as ground for inability of calling official witness.

The Ld. Counsel on behalf of plaintiff/OP has filed W.O against the petition stating that the application is liable to be dismissed as the same was fixed for official witness 17.05.2018 but the defendant has repeatedly failed to take steps for calling official witness. Hence, the Ld. Counsel on behalf of the OP/plaintiff submits that the the instant petition is liable to be dismissed.

Upon going through the case record it is seen that since 20.03.2018 the has been fixed for official PW's but the defendant failed to bring the official witness and vide order dated 28.07.2022 the case was proceeded on account of inability of the defendant to produce the official witness. Further perusal of the case record shows that the defendant was not given a last opportunity for calling the official

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witness and due to this inadvertent omission on part of this court, the case was proceeded and fixed for argument.

Now, taking into account that the witness in question is an official witness whose examination seems to be necessary for adjudication of the real controversy. Furthermore, dis allowing the defendant from filing official witness may amount to causing prejudice to the defendant.

Hence, in considerate opinion of this Court it is deemed fit to allow the prayer of filing of official witness of defendant. Taking into account the delay already caused by the defendant by availing multiple opportunities, the instant petition is allowed subject to payment of cost of Rs. 5,000/- to be paid to the plaintiff.

The defendant shall take step immediately for calling of official witness on the next date fixed. Upon failure the defendant shall be precluded from filing evidence of official witness.

Hence, the Misc(J) Case is allowed with cost and disposed of.