

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.53 of 2023

Sri Rajesh Karmakar

.....Petitioner(s);

Versus

Md. Narul Islam

.....Respondent(s)

For Petitioner(s) : Mr. D.R. Chowdhury, Sr. Advocate,
Mr. D. Deb, Advocate,
Mr. S. Sarkar, Advocate.

For Respondent(s) : Mr. A. Acharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

16/02/2024

One Pradip Kumar Paul, who had drafted the agreement for sale between the parties and had also filed *Vakalatnama* on behalf of the plaintiff in Title Suit No.01/2021, allegedly withdrew from the suit by filing a petition with a no objection. Prayer to adduce him as a witness of the plaintiff has been refused by the learned court vide order dated 03.01.2023 which has been upheld in the review order dated 23.08.2023 impugned herein.

2. The original order though is not under challenge, but the review order reiterates the grounds for rejection. Learned counsel for the plaintiff/petitioner Mr. Sarkar has referred to the provisions of the Code of Civil Procedure and submitted that there is no bar for an advocate to appear as a witness in favour of any of the parties. The only constraint, which the learned Court was confronted with, was the provisions of the Bar Council of India Rules, specifically Rule 13 of Chapter II of Part VI of the Bar Council of India Rules framed under the Advocates Act, 1961. Since the Code does not debar any person from being adduced as a witness if he is otherwise competent to do

so, plaintiff may be allowed to adduce him as a witness as he drafted the agreement for sale. The trial is underway and evidence of defendants has not yet started.

3. Mr. A. Acharjee, learned counsel for the respondent, has opposed the prayer. He has referred to the impugned order and submitted that the learned Trial Court has observed at para 12 and 14 that even after his withdrawal from the suit, he had filed a memo of appearance for the plaintiff. It is submitted that this conduct of the proposed witness may invite disciplinary proceedings under the Bar Council of India Rules. He also submits that the original order dated 03.01.2023 has not been challenged. Therefore, the instant petition should not be entertained.

4. I have considered the submission of learned counsel for the parties and taken note of the relevant materials referred to hereinabove. Apart from the Bar Council of India Rules which prescribe a restriction upon a lawyer to appear as a witness, Section 118 of the Evidence Act, 1872 does not lay down any restriction for an advocate to be a witness. However, it would not be proper for a counsel to appear in the witness box without retiring from the case as counsel. There appears to be some doubt as to whether the said lawyer has retired from the suit as a counsel for the plaintiff.

5. In the facts and circumstances of the case, this Court therefore makes it clear that only if the concerned lawyer has retired from the suit as a counsel for the plaintiff, the learned Trial Court would permit him to be adduced as a witness in support of the agreement for sale.

6. With these observations, the instant petition is disposed of giving liberty to the plaintiff/petitioner to move a fresh application before the learned Trial Court in Title Suit No.01/2021 to adduce Mr. Pradip Kumar Paul as a witness. Learned Trial Court should be satisfied as to whether the said person has retired from the case as a counsel for the plaintiff before allowing such prayer. The learned Trial Court would not be inhibited in entertaining a fresh application with such request in view of the orders passed earlier dated 03.01.2023 and 23.08.2023. The impugned order is accordingly set aside.

7. The instant petition stands disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ