

11.02.2021
Sl. No. 6
srm

C.O. No. 209 of 2021

**M/s. Desire Agro Resorts Development Private Limited
Vs.
Sunayna Biswas**

Mr. Raghunath Chakraborty,
Mr. Mahaboob Ahmed

...for the Petitioner.

This revisional application has been filed against an order dated December 23, 2019 passed by the learned Civil Judge (Senior Division), 9th Court at Alipore, District-24-Parganas (South) in Money Suit No.1397 of 2016.

It is the contention of the petitioner that the plaintiff has not been deposing and instead, the husband of the plaintiff, Mr. Achintya Kumar Biswas, is deposing in the suit as her constituted attorney. Mr. Chakraborty submits that the facts which are within the special knowledge of the wife cannot be deposed through the husband and if such statements are made, the same could not be accepted by the Court.

Accordingly, the petitioner filed an application before the learned Court below praying for a direction for taking off the evidence of the power of attorney holder (husband) from the records and not to allow the husband to depose further on behalf of the plaintiff. The learned Court below upon considering the provisions of Order III Rules 1 and 2 of the

Code of Civil Procedure and the judgment reported in AIR 2005 SC 439, held that those provisions would not be squarely applicable in the case on the ground that the husband, Sri Achintya Kumar Biswas could depose on behalf of the plaintiff, who was his own wife, but the deposition of PW1/Achintya Kumar Biswas and the documents produced by him would be considered by the Court to the extent that those related to the facts which were within his personal knowledge. The facts, which were not within the knowledge of the power of attorney holder, would not come in evidence and no cross-examination on such points would also be allowed. Thus, the application of the petitioner was rejected.

Aggrieved by the said order, this revisional application has been filed.

Mr. Chakraborty submits that the Hon'ble Apex Court in the matter of Janki Vashdeo Bhojwani & Anr. vs. Indusind Bank Ltd & Ors. reported in AIR 2005 SC 439 held that the question whether the appellants before the Hon'ble Apex Court had any independent source of income and had contributed towards the purchase of the property from their own independent income, could only be answered by the appellants and not by a mere holder of power of attorney. In the case before the Hon'ble Apex Court, a single power of

attorney holder had deposed on behalf of all the appellants. The proceeding was with under the Recovery of Debts Due to Banks and Financial Institutions Act. In a recovery proceeding an attachment of the house was allowed. The same was challenged by the wives of the debtors on the ground that the house was purchased from their funds. The wives of the debtors could not show independent income and the objection was held as not maintainable. Matter went up to the Apex Court. Under such circumstances, the Hon'ble Apex Court held that it was the burden on the wives to come and discharge by showing their independent income and the power of attorney holder, who deposed on behalf of the wives of the debtors, did not have personal knowledge of the source of income of the wives and no documents could be produced before the Court as proof of independent income of the wives. That was the ultimate ratio in the judgment and the Hon'ble Apex Court held that the evidence on issues or facts over which a person had personal knowledge could only be accepted, if the said person deposed and discharged the burden, but could not be accepted if a power of attorney holder deposed on behalf of such person on issues and facts which were not within the personal knowledge of the power of attorney holder.

In this case, the evidence has just begun. The plaintiff being the wife of the power of attorney holder is not deposing. Instead, the husband has been given the power to depose on behalf of the wife. The learned Court below has restricted the deposition of the husband to only those facts and issues of which he has personal knowledge and also has restricted the cross-examination to those points only. At this stage, there is no material irregularity in the order impugned. The contentions of Mr. Chakraborty are to be raised at the trial when the probative value of evidence of Achintya Kumar Biswas will be weighed and judgment relied on by Mr. Chakraborty will come in his aid at that point of time.

This Court has not gone into the merits of the claims and counterclaims of the parties and the learned Court below shall proceed independently.

The revisional application is disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)