

14.06.2023
Sl. No.6(DL)
srm

C.O. No. 578 of 2023

Sri Naren Kumar Kejriwal @ Narendra Kumar Kejriwal

Versus

Sri Purusottam Kejriwal & Ors.

Mr. Prasad Bhattacharyya

...for the Petitioner.

Mr. Tanmoy Mukherjee,

Mr. Souvik Das,

Mr. K. Raihan Ahmed

...for the Opposite Party No.1.

The petitioner is aggrieved by an order dated January 5, 2023 passed by the learned Judge (Senior Division), 2nd Court at Howrah in Title Suit No.54 of 2006. By the order impugned, the learned court below rejected an application dated September 15, 2022 filed by the defendant No.1 in the suit, under Order XI Rules 12, 14 and 15 of the Code of Civil Procedure.

By the application, the defendant No.1/petitioner prayed for a direction upon the defendant No.2 to produce the power of attorney before the learned court for inspection by the petitioner. The petitioner denied the existence of any such power of attorney, authorising the opposite party No.1, i.e., the

defendant No.2 to contest the suit and file the written statement on behalf of both the defendants.

Such application was turned down by the learned court below on the ground that the defendant Nos.1 and 2 were contesting the suit together and had a common cause of action. The defendant No.1 could not take undue advantage of the provisions of Order XI Rules 12, 14 and 15 of the Code of Civil Procedure.

The learned court below also recorded that by two earlier orders dated April 12, 2022 and August 4, 2022, two applications filed by the petitioner, one for leave to file a separate written statement and the other to adduce evidence as a DW, had been rejected. The petitioner did not challenge the said order before any higher forum.

Moreover, at the stage of arguments, no useful purpose would be served to ask the defendant No.2 to produce the power of attorney when it was an admitted position in the applications filed by the petitioner that the defendants had jointly filed the written statement. Under such circumstances, on the basis of the findings of facts and on the basis of the records, the learned court below refused to pass any orders and rejected the application filed by the petitioner.

It appears to the Court that after the suit progressed and evidence was recorded, some disputes cropped up between the defendants. The petitioner wanted to be represented separately and to contest the suit independently.

As there is no challenge to the orders already passed by the learned court earlier rejecting the two applications filed by the petitioner one for filing a separate written statement and the other for adducing separate evidence as a DW, no useful purpose would be served in directing the defendant No.2 to produce the power of attorney. It is an admitted position that the defendants were contesting the suit together and had filed a joint written statement. The petitioner has himself admitted such fact.

However, as the petitioner seeks to place his own case before the learned court below, leave is granted to the petitioner to engage a learned Advocate who will advance arguments on behalf of the defendant No.1 in the suit. However, such arguments shall be restricted to controverting the plaint case, the averments in the written statement, and the evidence already on record. No contrary or new case to the case made out by the defendants can be made out in the arguments. The learned court below shall hear the learned

Advocate to be engaged by the defendant No.1 in the suit as well.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)