

09.10.2023
Sl. No.19(ML)
srm

C.O. No. 2733 of 2023
Shri Narayan Prasad Chakraborty
Versus
Smt. Shefali Chakraborty

Mr. Souvick Mitra

...for the Petitioner.

The petitioner is the elder son of Smt. Shefali Chakraborty, the opposite party, who is admittedly 92-years old and unable to move around. The proceedings for revocation of a probate of a Will of the predecessor-in-interest of both the parties are pending, namely, i.e., Misc. Case No.283 of 2019.

The learned court, on an application filed by the power of attorney of Smt. Shefali Chakraborty, allowed examination of Smt. Shefali Chakraborty on commission. Reasons have been assigned. Taking note of the physical condition of the lady, her age and the medical documents, the learned court directed that the evidence of Smt. Shefali Chakraborty will be recorded by a witness commissioner. It was further recorded that the witness commissioner could also ascertain by looking at the witness whether she was in a vegetative state of mind or alert enough to depose.

The petitioner has challenged the said order on two grounds:

- (a) The application was filed by a power of attorney of Smt. Shefali Chakraborty. The deed of power of attorney is under challenge in another suit.
- (b) The witness commissioner could not ascertain the physical and mental condition of the witness.

I do not find any reason to interfere with the order impugned. The fact that the petitioner's mother is old and infirm, is not in dispute. The witness commissioner can administer oath and the evidence may be recorded, if she can answer the question.

The petitioner is free to cross-examine and put all questions to the opposite party. The existence of the deed of power of attorney and the role played by the said constituted attorney can be a part of the cross-examination. Moreover, the deed of power of attorney which has been challenged in another suit, has neither been stayed nor set aside.

Under such circumstances, this Court does not find any illegality in allowing evidence on commission of a 92-year-old lady, who is the mother of the petitioner and who is contesting a suit for revocation of probate.

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.)