

**IN THE HIGH COURT AT CALCUTTA**  
**(Criminal Revisional Jurisdiction)**  
**CIRCUIT BENCH AT JALPAIGURI**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**C.O 93 of 2022**

**With**

**CAN 1 of 2022**

**Smt. Mamuni Dey**

**Vs**

**Sri Abhijit Malakar.**

**For the Petitioner** : Mr. Debabrata Dhar,  
Mr. Prodyot Kumar Roy.

**For the Opposite Party** : Mr. Suman Sehanabis.

Heard on : 10.04.2023

Judgment on : 12.04.2023

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred praying for quashing/setting aside of the impugned order No.65 dated 11.05.2022 passed by the learned District Judge, Cooch Behar in T.S. (Misc. Probate) Case No. 04 of 2012.
2. The petitioner's case is that the petitioner is the sole defendant in the T.S. (Misc. Probate) Case No.04 of 2012 pending before the Learned District Judge, Cooch Behar. The sole respondent to this revisional application is the sole plaintiff in the said civil suit. The respondent happens to be the full-blooded brother of the petitioner.
3. That the aforesaid civil suit relates to the impugned Will of their father. The said Will is under challenge being not executed/declared by their father Late Paresh Chandra Malakar which allegedly executed on 19.08.1999.
4. That their father died intestate on 11.12.2009 leaving four legal heirs being their mother Lakxmi Rani Malakar who subsequently died on 06.01.2020, their younger sister Smt. Tapashi Malakar wife of Late Ramkrishna Malakar residing at House No.20, Bharali Mukh, Post Office-Panbazar, Guahati-1, Assam, and the petitioner herself, and the plaintiff being respondent.
5. That during the continuation of the said civil suit the petitioner received a photo copy of the said last Will through the learned advocate of the other side and it appeared that the said Will is fraudulent prepared at the instance of the respondent and his other associates. Hence, she lodged a police complaint

being Mathabhanga Police Station Case No.691 of 2011 under Sections 465/468/471 of IPC. In the said criminal case i.e. FIR there is also allegations about misappropriation of the petitioners share of income of Rs.17 lacs more or less from the business left by her father.

6. That being dissatisfied with the investigation and praying for transfer of said investigation to CID, West Bengal she filed a writ petition being WPA No. 440 of 2022. The Hon'ble Court was pleased to pass order for filing of supplementary affidavit. After the resumption of normal functioning of the court, the said T.S. (Misc. Probate) No.04 of 2012 was fixed on 05.04.2022 for cross examination. Since the learned court was determined to continue the said proceeding, an order was passed with an unreasonable cost of Rs.4000/- out of which Rs.2000/- to be paid to P.W-3 and Rs.2000/- to be deposited with D.L.S.A., Cooch Behar upon adjustment of the previous cost of Rs.1,000/-. It is submitted that the order impugned being order No.64 was passed restricting the right of cross examination subject to said payment ignoring the post Covid economic struggle of petitioner who belongs to lower income group and also ignoring the actual cost of transport charges of witness no.3 from Mathabhanga/Nishiganj to the learned court being maximum Rs.300/- only.

7. It further appears from the said order no.64 that the investigating officer has filed a prayer for examination of the said Will by the competent authority of the CID, West Bengal.

8. On 07.05.2022 challenging the aforesaid impugned order no.64 dated 05.04.2022 the petitioner filed a revisional application before this Hon'ble Court.

9. That the petitioner then filed an application under Section 151 of Cr. P.C stating the fraudulent action of the respondent no.1, who prepared the said Will fraudulently taking the signature of the Testator in the blank white pages. Vide the impugned order no.65 passed by the learned trial court rejected the said application for adjournment of the cross examination, thereby closing the cross examination of P.W 3 with further similar unreasonable cost of Rs.4000/- payable to D.L.S.A., Cooch Behar and also allowing the prayer of the Investigating Officer in Mathabhanga Police Station case No.631 of 2021 dated 11.11.2021 u/s 465/468/471/420 IPC by supplying the Photo Copy of said Will to the Investigating Officer.

10. It is submitted that the learned Judge failed to consider that the cost imposed is unreasonable.

11. **Mr. Debabrata Dhar, learned counsel for the petitioner** submits that the petitioner is aggrieved that vide the order under revision in Title Suit No.04/2012, the District Judge, Cooch Behar passed following (part) of the order :-

**Order No. 65**  
**Dated 11.05.2022**

*“.....On going through the petition and from the fact of non-payment of cost, it appears to me that there is lack of bonafideness in the approach of the O.P. Hence, the petition is rejected with a cost of Rs.4,000/- to be paid to the D.L.S.A., Cooch*

*Behar. The present witness is a senior citizen who has, according to the learned counsel, suffered prolonged illness. So his attending the Court on repeated occasions due to frivolous petition should not be encouraged. Hence, by rejecting the petition, cross examination of this witness is closed.....”*

**Sd/-  
District Judge  
Cooch Behar**

12. **Mr. Suman Sehanabis, learned counsel for the opposite party** has submitted that the order under revision is in accordance with law and as such the revision is liable to be dismissed in the interest of justice.

13. On perusal of the order dated 11.05.2022 under revision it is seen that Title Suit No.04 of 2012 is of the year 2012. The learned trial court gave several opportunity to the opposite party. Finding no other alternative the evidence of P.W 3 was closed and a sum of Rs.4,000/- was imposed as costs.

14. Considering the said facts and circumstances of the case, the order under revision is modified to the following extent in the interest of justice.

*“The opposite party be given one last opportunity within two months from the date of receipt of this order to cross examine P.W 3 in this case of the year 2012 in the interest of justice. The direction for payment of cost remains unchanged.”*

15. **C.O 93 of 2022 along with CAN 1 of 2022 are accordingly disposed of.**

16. The order no. 65 dated 11.05.2022 passed by the learned District Judge, Cooch Behar in T.S. (Misc. Probate) Case No. 04 of 2012 is accordingly modified.

17. There will be no order as to costs.
18. All connected Application stand disposed of.
19. Interim order if any stands vacated.
20. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
21. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**