

05.02.2024
Sl. No.3(ML)
srm

C.O. No. 365 of 2023
Smt. Priti Datta & Ors.
Versus
Smt. Anima Dey & Anr.

Mr. Surajit Samanta,
Mr. Biswajit Samanta,
Ms. Sohini Samanta

...for the Petitioners.

The revisional application arises out of an order dated December 2, 2022 passed by the learned Additional District Judge, 1st Court at Barasat, North 24-Parganas in OS No.34 of 2017 bearing CIS Registration No.22 of 2017.

By the order impugned, the learned court below did not fix the application under Section 45 of the Indian Evidence Act, 1872 read with Section 151 of the Code of Civil Procedure for hearing, but directed the defendants to file their written statement.

Mr. Samanta, learned Advocate appearing on behalf of the defendants submits that unless the application under Section 45 of the Indian Evidence Act, 1872 read with Section 151 of the Code of Civil Procedure was disposed of, thereby appointing a handwriting expert to compare and examine the

signature of the testator of the Will, the defendants would not be in a position to file their written statement.

In my opinion, such prayer is incorrect.

In my, *prima facie*, view unless the defendants file their written statement, thereby disclosing their grounds of challenge and the document is tendered before the court, the question of appointment of a handwriting expert would not arise.

Thus, the court had rightly directed the defendants to file their written statement, before the application was considered.

It appears that by an order dated January 20, 2024, the learned court below has fixed the suit for *ex parte* hearing during the pendency of the revisional application. In my opinion, the defendants should approach the learned court below praying for removal of the suit from the *ex parte* board and pray for one last chance to file their written statement. The learned court shall consider the application and pass necessary orders.

This Court has not gone into the merits of the issues involved in the suit.

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.)