

05.02.2024
Court No. 19
Item No.12
CP

C.O. No. 3544 of 2023

Sri Santimoy Mallick

Vs.

Gracewell Breweries Limited & Ors.

Mr. Partha Pratim Roy

.....for the petitioner.

Mr. Indrajit Bhattacharjee

Mr. Murari Mohan Ganguly

...for the opposite party nos. 1 &2.

The petitioner is aggrieved by an order dated March 28, 2023, passed by the learned District Judge, Hooghly in Title Appeal No. 82 of 2016.

By the order impugned dated March 28, 2023, an application filed by the petitioner under Section 151 of the Code of Civil Procedure was dismissed. The application was filed by the petitioner challenging the maintainability of the appeal. It was stated that by practicing fraud and by swearing a false affidavit, Pannalal Bag, represented himself as the Director of Cresswell Breweries Co. Limited, as on November 31, 2007. The said appellant no.2 did not have any locus to sign the affidavit and affirm the same. Pannalal Bag did not have any authority to represent the company/plaintiff no. 1 and file the suit and the appeal.

A written objection was filed by the opposite parties. CA 71 of 2004, was relied upon by the opposite parties. The High Court had observed in the said proceeding that there was no basis to challenge Pannalal Bag's authority. Such order was passed on February 20, 1996.

The learned lower appellate court was of the view that the issue as to whether the appellant no. 2/opposite party no. 2 was a director of the company at the relevant point of time when the suit was filed, would be considered as an issue in the appeal. It was not prudent to decide the issue of fraud at the stage of disposal of the interlocutory application. If such point was decided at the interim stage, the appeal would become infructuous.

The suit was dismissed, inter alia, on the ground that the plaintiffs did not have any locus to file the suit.

Aggrieved, a title appeal has been filed. The question of locus of the plaintiffs/appellants goes to the merit of the appeal. Thus this court does not find any reason to allow the prayers in the application.

The appeal has been fixed for hearing. The appeal will be disposed of within the next three months. The observations made herein are for the purpose of disposal of the revisional application, and the learned court will not be influenced by the same.

The learned lower appellate court shall proceed independently, without being influenced by his own observations.

The revisional application is accordingly disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)