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IN THE HIGH COURT AT CALCUTTA  
CIVIL REVISIONAL JURISDICTION

**CO 1283 of 2024**

Shyam Sundar Agarwal  
*Versus*  
Omkar Nath Pandey & Ors.

Mr. Swapan Kumar Pal  
Ms. Mohuya Dutta Biswas  
... For the petitioner.

1. Challenging the orders dated 30<sup>th</sup> November, 2023 and 15<sup>th</sup> December, 2023 passed by the learned 10<sup>th</sup> Bench, City Civil Court, Calcutta, in T.S. No. 151 of 2010, the instant revisional application has been filed.
2. The petitioner is aggrieved with the direction for production of the power of attorney in terms of a petition filed under Order XI Rule 14 of the Code of Civil Procedure, 1908 (for short, 'Code').
3. To understand the scope of the aforesaid revisional application it would be relevant to briefly note down the facts leading to the institution of the present application.
4. It appears that a suit has been filed praying for a decree in the form of declaration that the lease deed which had been executed on the basis of the power of attorney purportedly dated 18<sup>th</sup> April, 2000 be declared void as also to declare that the power of attorney dated 18<sup>th</sup> April, 2000 is a forged and manufactured document and also

for other consequential reliefs in the form of permanent injunction. The plaintiffs' case proceeds on the premise that the plaintiffs predecessor-in-interest Ram Adhin Pandey on the strength of a registered deed of sale executed on 12<sup>th</sup> October, 1963 became an owner in respect of the thika tenanted premises being No. 14/2/H/2, Balaram Ghosh street, P. S. Shyampukur, Kolkata – 700 004. According to the plaintiffs, Ram Adhin Pandey and his wife Kamala Devi died intestate leaving behind his three sons Om Prakash, Om Nath and Om Barhm Pandey and one married daughter Gayatri Pandey, who have inherited the right in the thika property in equal shares. Om Nath, Om Barhm and Gayatri are the plaintiff nos. 1, 2 and 3 respectively. As per the family arrangement Om Prakash was permitted to collect rent from the property. It is the plaintiffs' case that the defendant no.1 in connivance with Om Prakash Pandey since deceased and some other persons caused to be manufactured, forged the general power of attorney purportedly executed by the plaintiffs and on the strength whereof a lease deed was executed in the favour of the defendant no.1. Challenging the aforesaid lease deed as also the power of attorney, the above suit has

been instituted.

5. The defendant no.1/petitioner has been contesting the said suit by filing written statement. In paragraph 14 the defendant no.1 has claimed that the plaintiff nos. 1 to 3 executed the general power of attorney in favour of one Om Prakash Pandey, since deceased, on 18<sup>th</sup> April, 2000 thereby authorizing him to induct tenant in respect of the suit property, realise rents, sell, lease out the property. In paragraph 18 the defendant no.1 has categorically stated that the general power of attorney was signed before the Notary Public at Kolkata on 18<sup>th</sup> April, 2000 and as such the question of fabrication of such instrument does not arise. Since, the defendant no.1 had been ascertaining title on the strength of the power of attorney purportedly executed on 18<sup>th</sup> April, 2000, an application was filed under Order XI Rule 14 of the Code by the plaintiffs, inter alia, praying for a direction upon the defendant no.1 to produce the original power of attorney. By order dated 12<sup>th</sup> April, 2023 the learned Judge allowed the application and directed the defendant no.1 to produce the power of attorney. The defendant no.1, however, immediately upon passing of such order had taken out an

application holding out that he does not possess the original power of attorney and as such had sought for recall of such order passed by the learned Court. The factum of filing of such application for recall is recorded in the order dated 30<sup>th</sup> November, 2023. On 15<sup>th</sup> December, 2023 since, the defendant no.1 was not represented, the aforesaid application for recalling of the order dated 12<sup>th</sup> April, 2023 was rejected and the matter was posted for ex parte hearing. Being aggrieved, the present revisional application has been filed. The petitioner/defendant no.1 has however not been able to demonstrate before this Court from the written statement that any averment had been made that the petitioner does not possess the power of attorney though, the petitioner claims to have acquired interest on the strength of such power of attorney. Although, Mr. Pal, learned advocate appearing in support of the aforesaid revisional application had attempted to make out a case from the Bar that the power of attorney was lying with the plaintiffs, the foundation of such statement is neither found in the written statement nor in the application for recall filed by the petitioner.

6. Be that as it may, if the petitioner is unable to

produce the power of attorney by reasons of not possessing the same, the consequence of such non-production of such power of attorney shall follow. The same, however, cannot be a ground for recalling of the order dated 15<sup>th</sup> December, 2023 especially having regard to the fact that the entire basis of the petitioner's claim rests on the power of attorney. Since, the matter has already been fixed for ex parte hearing, I am not inclined to interfere with such order especially when there is no application for recall of such order. However, it shall be open to the petitioner to apply before the learned Court for seeking recall of such matter from ex parte board, if so advised. If any such application is filed the learned Court shall adapt a justice oriented approach and make an endeavour to hear out the suit on merits by giving due opportunity to both the parties.

7. With the above observations and directions, the revisional application is disposed of.
8. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities

**(Raja Basu Chowdhury, J.)**