

20.05.2025
Item No. 6.
Court No.446.
AB

C. O. 2477 of 2024

**Sri Indrajit Sengupta & Ors.
Vs
Sri Sabujendra Mukherjee & Ors.**

Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty,
Mr. Sunny Nandy,
Ms. Sushmita Kumari Singh
.....for the Petitioners.

Mr. Chandra Sekhar Banerjee,
Mr. Shamit Dutta,
Ms. Madhumita Sahafor the O. P. No.1.

Mr. Suvdeep Senfor the O. P. No.6.

Mr. Shankar Ranjan Sen....for the O. P. No.2.

1. Affidavit of service filed in Court today be kept on record.
2. This revisional application is directed against an order passed by the learned Civil Judge (Jr. Division), First Court at Bolpur in Title Suit No.58 of 2016 whereby the prayers of the defendant/opposite party no.1 was allowed.
3. It is the case of the petitioners that the suit is being filed for declaration and permanent injunction by the plaintiffs against the opposite parties before the learned Trial Court which was registered as Title Suit no.58 of 2016. Written Statement was filed by the opposite parties in the said suit and thereafter the suit was proceeded to the evidence stage after framing of issues. The petitioner no.1 duly filed his affidavit in evidence on behalf of the petitioners before the learned

Court along with all the documents amongst which the certified copy of a Power of Attorney dated 3.2.2012 being Deed no.00117 of 2012 was also filed.

4. However, it is the specific case of the petitioners that the original copy of such Power of Attorney was seized by Kasba Police Station in connection with Kasba P.S. Case No.245 Dated 23.04.2014 under Sections 468/465/471/120B/420 of the Indian Penal Code filed at the instance of the opposite party no.1 against the opposite party no.5 herein.
5. The Hon'ble Coordinate Bench vide an order dated 31.01.2025, while admitting this revisional application, was of the view that whether by virtue of Order VII Rule 14(2), the plaintiffs/ petitioners ought to have been relieved from the necessities of producing the original Power of Attorney along with the plaint since it is not in the possession or power of the plaintiffs, is to be considered.
6. It was further observed that the plaint was filed regarding in whose possession or custody the document is in and in such context the expression "where possible" in Order VII Rule 14 (2) acquires relevance and might absolve the petitioners from incorporating such statement in the plaint.
7. It is contended by the learned advocate for the petitioners that the learned Court without

considering this aspect that the original Power of Attorney is not lying under the custody of the plaintiffs, allowed the prayer of the defendant no.1 vide the impugned order without assigning any reason.

8. Learned advocate appearing on behalf of the opposite party nos. 1 and 2 submits that since nothing was mentioned in the plaint as required under the provisions of law that under whose custody, the document is lying, without filing photocopy of the said document, the petitioners failed to prove the same and hence, the suit ought to have been dismissed.
9. It is submitted that carriage of proceeding lies with the plaintiffs and he must make all endeavour to prove the said document while relying upon such document.
10. The opposite party no.6 from whose custody, the Power of Attorney has been seized also submits that the document is lying with the police authority by virtue of the seizure list and it is the concerned Court, who has to apply his judicial discretion to proceed with the suit.
11. After hearing the rival contentions of the parties and the observations of the Hon'ble Coordinate Bench, this Court finds at the outset that the order impugned is cryptic enough without assigning any reason as to how despite the fact being placed

before the learned Court about the original Power of Attorney, no reason has been assigned by the learned Court. Accordingly, at the outset, the said order is liable to be set aside only on that score.

12. Fact remains the evidence of P.W.1 is going on. At this stage when admittedly the document is not under the custody of the plaintiffs as reveals from the Written Objection filed by the present petitioners against the application under Order VII Rule 14 and also from the documents annexed with this Revisional Application at page 53 (seizure list) that the original Power of Attorney is lying with the Police Authority, the plaintiffs are to be absolved to produce the documents for the present. However, that will not recuse the petitioners/plaintiffs to prove their case by adducing cogent evidence as required under the law. Pursuant to Order VII Rule 14 of CPC where the plaint is presented if the document is not in possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. It is otherwise mandatory for the plaintiff to produce the documents on which the cause of action is based and non production of the same may be fatal for the plaintiff. In this case, however, the certified copy of Power of Attorney has been filed but since the same is seized by the police

authority in connection with a criminal case, the plaintiff is unable to produce the original.

13. Therefore, considering this peculiar circumstances, the learned Court is directed to apply his judicial mind while taking necessary steps in order to proceed with the suit in terms of Order 13 Rule 10 of CPC either on the basis of an application filed by the parties or at his discretion so far production of the original document is concerned. It is made clear even if any such step is taken by the Court that would not be considered for deciding the suit on merit and the suit must be proceeded by the Dominus litis that is the plaintiff after following the relevant provision.
14. In view of the above, the instant revisional application is disposed of.
15. Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Chaitali Chatterjee (Das), J.)