

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.3034 of 2022
Nawaljit Singh & Anr.
VS.
Sarbjeet Singh

For the petitioners :Ms. Tanushree Dasgupta, Adv.
Mr. Atanu Mondal, Adv.

For the Opposite Party :Mr. Krishna Das Poddar, Adv.
Ms. Rubina Akhtar, Adv.
Ms. Mondira Barman, Adv.
Mr. Surajit Maity, Adv.

Last Heard On :12.03.2025

Judgement On :06.05.2025

Bibhas Ranjan De, J. :

1. Challenge in this revision application is the order no. 29 dated 26.08.2022 passed in connection with Title Suit no. 660 of 2021 wherein Ld. Judge ixth Judge, City Civil Court at Kolkata refused

the application under Order 19 Rule 2 of the Code of Civil Procedure (for short CPC).

2. Issue before the Trial Court dealing with Title Suit No. 660 of 2021, was that one affidavit in-chief was filed by one Manjit (Manprit) Singh Sabarwal on behalf of Sarabjit Singh plaintiff of the suit. It was argued before the Trial Court that said Manjit (Manprit) Singh was not at all conversant with the factual aspects of the suit and accordingly no locus standi to swear the affidavit before the Court.
3. Factually, in brief, this suit being no. 660 of 2021 was filed by one Sarabjit Singh against his two brothers namely Nawaljeet Singh and Mandeep Singh Sabarwal with a prayer for declaration of joint tenants of the shop room mentioned in the scheduled to the plaint along with other consequential reliefs.
4. In the suit plaintiff filed an also application under Order 39 Rule 1 & 2 of CPC wherein defendants contested by filing written objection. Both the parties filed their respective affidavit in opposition and reply thereto. Defendants in their written objection referred to a deed of partnership dated 28.06.2002 executed by and between the parties to the suit. **At this stage, Manjit (Manprit) Singh, son of the plaintiff submitted one**

affidavit in reply to the written objection filed by the defendants contending inter alia that the plaintiff never signed the said deed in Hindi language and partnership deed was alleged to have been forged document. That is why, the application under Order 19 Rule 2 was filed with a prayer for cross examination of Manjit (Manprit) Singh.

At the Bar:-

5. Ld. Counsel, Ms. Tanushree Dasgupta, appearing on behalf of the petitioners has submitted that the veracity of the affidavit filed by the son of the plaintiff that too denying the signature of the plaintiff on the partnership deed cannot be tested unless he is subjected to cross examination. In support of her contention, she relied on the following cases:-

- ***Ranglal and another vs. Prescribed Authority and another, (1982) All LJ 1131***
- ***Ram Swaroop and ors. vs. Bholu Ram , AIR1991 RAJ56***
- ***Ramji Rai vs. Smt. Champa Rai and others, (2024) 3 MPLJ 520***

6. Mr. Krishna Das Poddar, Ld. Counsel, appearing on behalf of the opposite party countered by contending inter alia that in disposing of an application under Order 39 Rule 1 of CPC Ld.

Trial Court can exercise a discretionary power either to direct the parties to prove the facts and prayer by affidavit or otherwise. Ld. Court can also invoke power under proviso to Order 19 Rule 1 of CPC, if it appears to the Court that either bona fide desires the production for a witness for cross examination.

Analysis:-

7. At the very outset, I would like to reproduce the provision of Order 39 Rule 1 and Order 19 Rule 1, 2 & 3 of the CPC which runs as follows:-

“ Order 39 CPC Description

Temporary injunctions

1. Cases in which temporary injunction may be granted.-

1. Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to 2[defrauding] his creditors,

3[(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,]

the Court may be Order grant a temporary injunction to restrain such act, or make such other Order for the purpose of staying and preventing the wasting,

damaging, alienation, sale, removal or disposition of the property 3[or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further Orders.

Order 19 CPC Description

1. Power to Order any point to be proved by affidavit.-

Any Court may at any time for sufficient reason Order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an Order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. Power to Order attendance of deponent for cross-examination.-

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, Order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.

3. Matters to which affidavits shall be confined

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hear say or argumentative matter, or copies of or extracts from document, shall (unless the Court otherwise directs) be paid by the party filing the same.”

- 8.** Conjoint reading of two rules of Order 19, it appears that even where evidence is required to be given as contemplated under Rule 1 & 3 of the Order 19 of CPC i.e. in case of substantial application or suit, Court is empowered, if sufficient reason is shown, to record an order that a particular fact may be proved by affidavit. But, if it appears to the court that either party bona fide desires a production of a witness for cross examination, and such witness can be produced, an order should not be made authorizing the evidence of such witness to be given by affidavit. Similarly, on application of a party evidence can be given by affidavit and either side can move the court to order the attendance of such deponent for cross examination. Therefore, the limitations and conditions will govern the matter if the court exercises the power under Order 19 or in exercising power under Section 30 of CPC.
- 9.** The power discussed hereinabove can be exercised by the court only subject to conditions and limitations prescribed therefor.
- 10.** But in the case at hand, where special power is vested in the court to decide such application under Order 39 Rule 1 of

CPC expressly by the code, the aforementioned conditions and limitations will not be attached to the exercise of that power. Therefore, either party cannot claim a right to cross examine such deponents.

11. Alternatively, in the case at hand, the proof of partnership deed is the decisive factor of the suit where declaration and consequential relief was prayed for. In fact, rights of the parties in an interlocutory application under Order 39 Rule 1 of the CPC are not being decided finally. That is the reason, as it appears, that no such conditions and limitations have been prescribed in exercise of that special power under Order 39 Rule 1 of the CPC.

12. The cases relied on behalf of the petitioners handed down the ratio to the effect that Ld. Trial Court can allow cross examination of a deponent of an affidavit submitted in support of temporary injunction if it is necessary to clarify the facts. The facts of the cases dealt with by the Hon'ble Courts are not at all identical with that of ours where the subject matter of the affidavit was also an issue of the suit which has to be decided after recording evidence during trial.

13. In the case at hand, Ld. Trial Judge exercised such special power holding inter alia as follows:-

“ ... So, the crux of the matter is whether simply because the son of the plaintiff has sworn affidavit and has filed supplementary affidavit that means the case of the plaintiffs should not be disbelieved and the son of the plaintiff may not have any short of knowledge regarding the case and the relief as prayed by the plaintiff...”

14. Ld. Trial Judge concluded the order, in exercising the special power under Order 39 Rule 1 of the CPC, by observing as under:-

“ Needless to mention that at the time of constitution of the injunction petition under Order 39 Rule 1 and 2 which is now pending, oral evidence is not required and the court can pass order on the basis of affidavit and perusal of the relevant documents produced by the parties before the court.”

15. In the aforesaid view of the matter, I find hardly any scope to exercise the supervisory power under Article 227 of the Constitution of India as there is no infirmity or illegality in the order impugned in this revision application.

16. As a sequel, the instant revision application being no. C.O 3034 of 2022 stands dismissed without costs.

- 17.** Interim Order, if there be any, stands vacated.
- 18.** Connected applications, if there be, also stand disposed of accordingly.
- 19.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 20.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]