

10.11.2021
Ct. No.15
Sl. No.28
akd

F.M.A.T. 103 of 2017 *[via video conference]*
CAN 1 of 2017 (Old No. CAN 914 of 2017)

[Shibu Kar -Vs- Ratan Kar & Ors.]

Mr. Debdutta Basu
Ms. Pampa Dey (Dhabal)
... .. for the appellant

Affidavit-of-service filed in court today is kept with the record.

The appellant-executor has filed the appeal assailing the order dated 7th December, 2016 whereby the probate application was dismissed on the erroneous premise that it is barred by limitation. Such error, infact, was prompted by an incorrect stance taken by the appellant in taking out an application under Section 5 of the Limitation Act and seeking condonation of a so-called delay of 52 days which did not arise at all. There is no limitation in instituting a proceeding seeking probate of a will.

Under such circumstances, we are of the opinion that the order impugned is clearly erroneous and is liable to be set aside.

Accordingly, the impugned order is set aside.

The appeal is allowed.

Liberty is given to the appellant-executor to take steps for presentation of the probate application before the district delegate in accordance with law within 30 days from date.

In view of disposal of the appeal, the connected application being CAN 1 of 2017 (Old CAN 914 of 2017) is also disposed of.

Urgent photostat certified copy of this order, if applied for,
be given to the appellant on usual undertaking.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)