

23.02.2021
(S/L-38)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 244 of 2021

Sri Sukanta Banerjee
-Vs-
Sri Samir Banerjee & Ors.

Mr. Manas Dasgupta,
..... For the Petitioner.

Affidavit-of-service filed in Court today be
kept with the record.

None appears on behalf of the opposite
parties in spite of service.

The petitioner being the named executor of
the alleged last Will and Testament of one Sova
Rani Devi applied for grant of probate of the said
Will which gives rise to Act 39 of (Probate) Case
No. 107 of 2018 before the learned District
Delegate at Alipore District South 24-Parganas
(South).

The opposite parties are the heirs and legal
representatives of the deceased testatrix, as
such, were cited.

The service of notice through Court could
not gain the confidence of the learned Trial Judge
to hold that the said service was good as the
learned Trial Judge was not satisfied with the

mode of service indicated in the Process Server's report.

The repeated attempts of service of notice of the said proceeding through registered post also failed since the track report of the postal articles through which the notices were sent could not inspire the confidence of the learned Trial Judge to hold that those services were good.

The petitioner under such circumstances filed an application seeking publication of the notice of the connected probate proceeding in any widely circulated newspaper.

The learned Trial Judge by the order impugned has dismissed the said application.

The probate proceeding was initiated in the year 2018 since then it is locked at the stage of service of notice to the heirs of the deceased testatrix.

The repeated attempts to serve the notice upon the said heirs of the testatrix failed but the proceeding cannot be shelved at the stage of service of notice through general mode only when the alternative mode of service of such notice through publication is available.

The order impugned, for the aforesaid reason is set aside.

The application filed by the petitioner for publication of the notice of the connected probate proceeding in the newspaper is allowed.

The Learned Trial Judge is directed to take appropriate steps for such publication.

C.O.244 of 2021 is disposed of with the above terms. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)