

02.12.2021
Item No. 04
Court No.18
A.J.

C.O. 405 of 2021
(Through Video Conference)

Paresh Chandra Mandal
-Vs-
Bhabesh Chandra Mandal & Anr.

Ms. Baisali Ghoshal.
...for the petitioner.

Mr. Ramdulal Manna,
Mr. Sayan Mukherjee.
.....for the opposite parties.

The petitioner of the present application under Article 227 of the Constitution of India is the named executor of the alleged last Will and Testament of his uncle named Jogesh Chandra Mandal.

The proceeding became contentious on the objection being raised by the opposite parties. The said proceeding, O.C. Suit No. 02 of 2016 is pending before the 4th Court of the learned Additional District Judge, Malda.

The learned Trial Judge by the order impugned order dated January 16, 2021 has dismissed an application filed by the petitioner for addition of some of the heirs and legal representatives of the testator on the ground of delay in filing the said application.

The grant would be defective if made without citing the persons having caveatable

interest; steps taken by the executor to cure the said defect before the disposal of the suit cannot be denied only on the ground of delay.

Record speaks that the proceeding for grant has substantially progressed; at this stage, fresh citation would certainly cause delay in disposal of the said proceeding, no doubt, which would cause some prejudice to the contesting opposite parties; to compensate it, they must be awarded costs.

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

The application for addition of parties filed by the petitioner is allowed subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid to the objectors/opposite parties within a week from date. The petitioner to take appropriate steps.

The learned Trial Judge is requested to expedite the disposal of the said proceeding.

C.O. 405 of 2021 is disposed of without any order for 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.)