

Judgment

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

ORIGINAL SIDE

APOT 67 of 2021

with

PLA 105 of 2011

IA No. GA 1 of 2021

IN THE GOODS OF:

KISHORILAL JALAN (DEC.)

-AND-

NEELAM JALAN AND ANR.

-VERSUS-

VISHAL JALAN

BEFORE:

The Hon'ble JUSTICE ARINDAM SINHA

AND

The Hon'ble JUSTICE SUGATO MAJUMDAR

For appellants	:	Mr. Utpal Bose, Sr. Adv. Mr. Aniruddha Mitra, Adv. Mr. Ajay Gaggar, Adv. Ms. Trini Joarder, Adv.
For respondent	:	Mr. Sabyasachi Choudhury, Adv. Mr. Nischay Mall, Adv. Mr. Tridib Bose, Adv.
Heard on	:	2 nd and 11 th August, 2021 and 22 nd September, 2021.
Judgment on	:	22 nd September, 2021.

Arindam Sinha, J.: Parties have been heard on the application and appeal.

Mr. Bose, learned senior advocate appears on behalf of applicants/appellants, while Mr. Choudhury, learned advocate appears on behalf of respondent. Mr. Choudhury, in fairness, does not stand in the way of delay being condoned and the appeal itself being heard and disposed of on papers already disclosed. As such,

delay is condoned and the appeal itself taken up for hearing and disposal on dispensing with formalities.

Mr. Bose submits, by impugned order dated 16th June, 2015 the interlocutory Court found his client had failed to file vakalatnama and caveat. In the circumstances, including absence of his client at the time of hearing, the application was dismissed. He submits, the only ground for dismissal was stated delay of one year after there had been mention, in taking out the application. This position is incorrect. Mention was on 2nd February, 2012 and the application filed shortly thereafter in February, 2012 itself. He submits, on this short point of fact, impugned order be set aside and the appeal allowed. He refers to rules 24, 25 and 27 in Chapter XXXV of the Original Side Rules to submit, they are applicable to the case.

Mr. Choudhury submits, a caveat was filed on 21st November, 2011, the application for probate having been filed earlier on 20th May, 2011. This caveat was entered after the application had been filed. Affidavit in support of it ought to have been filed by 30th November, 2011. Keeping aside the mistake of fact, regarding dates of mention and application filed thereafter by appellants, another interlocutory Bench, by order dated 15th January, 2021, had noticed that by impugned order appellants had been denied right to file affidavit in support of the caveat. It is after this that the appeal came to be filed. What remains unexplained is why no affidavit in support of the caveat, entered on 21st November, 2011, was filed. According to him, entering of the caveat itself was deliberately suppressed.

Rule 24 says any person intending to oppose the issuing of a grant of probate or letters of administration, must file a caveat. Rule 25 requires a caveat, entered after the application has been made, to have affidavit in support of it, be filed within eight days of lodging of the caveat. Rule 27 provides for consequence

of not filing affidavit in support of the caveat, being that the caveat may be discharged on an order to be obtained on summons. It must be mentioned that rule 26 requires issuance of notice to a caveator, who lodged caveat before the application was made.

Impugned order dated 16th June, 2015 is reproduced below.

“The Court: This is an application for extension of time of file vakalatnama and lodge caveat in the probate proceeding. On 26th December, 2011 the applicant was served with a special citation. It is stated in the petition that on 1st February, 2011 the petitioner executed a vakalatnama. However by that time, the time to file a vakalatnama and lodge a caveat had expired. It is stated in paragraph 7 that the matter was mentioned before the Hon’ble Justice I.P. Mukerji on 2nd February, 2011 when the petitioner was presumed to have been asked to take out a formal application. This application was filed one year thereafter. No explanation is offered for not being able to file this application immediately after 2nd February, 2011. The petitioner has failed to explain the delay in filing the vakalatnama and caveat in the department concerned. The applicant is also not represented. Under such circumstances, GA No.394 of 2012 stands dismissed.

Urgent certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.”

Caveat was entered on 21st November, 2011, no affidavit in support of it filed and nothing has been shown that thereafter summons were taken out to discharge it. Instead, appellants had mentioned, admittedly on 2nd February, 2012 and soon thereafter filed the application, said in impugned order to be on delay and thereby rejected.

Impugned order proceeded on statement in the application that time to file vakalatnama and lodge a caveat had expired, coupled with perpetrating the mistake made in the application, regarding dates of mention and filing of it. The

rejection of the application is based on the mistake leading to inference of delay. We set it aside and restore the application.

The rules do not provide for a time, in which a caveat must be entered after an application for grant of probate or letters of administration has been made. In this case applicants were said to have been served with a special citation. Rule 12 in Chapter XXXV requires the citation to contain direction upon person(s), claiming to have any interest in the estate, to see the proceedings. It is to be considered whether in an application, on which special citation has been served on caveator, delayed affidavit in support of the 21st November, 2011 caveat may be filed. The interlocutory Court will deal with the application on benefit of facts noted above and observations made. It is clarified that we have not made any observation regarding merits of the rival claims on the estate.

The appeal and application are disposed of.

(ARINDAM SINHA, J.)

(SUGATO MAJUMDAR, J.)