

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/208/2021 WITH PLA/6/2016

IA NO.GA/1/2021, GA/2/2021

IN THE GOODS OF : AMALA BALA NAYAK [DEC.]
AND
IN THE MATTER OF: SONALI TEWARI

.....

BEFORE:

The Hon'ble JUSTICE I. P. MUKERJI

AND

The Hon'ble JUSTICE ANIRUDDHA ROY

Date : 20th December, 2021.

[VIA VIDEO CONFERENCE]

Mr. Sakya Sen, Mr. Meghnad Dutta, Mr. Lalratan Mandal,
Mr. Basudeb Patra, Ms. Maitraye Banerjee, Advs. ...for appellant.

Mr. Partha Pratim Mukhopadhyay,
Mr. Santimoy Bhattacharyya, Advs...for caveator.

The Court : A substantial cause is shown and for the ends of justice, we condone the delay in filing this appeal. Accordingly, the application, GA/1/2021 is allowed.

We propose to dispose of this appeal and the stay application dispensing with all formalities.

We are concerned with the last Will and Testament of one Amala Bala Nayak. She died on 16th December, 2010. The executor of the said last Will and Testament, Shambhu Nath Mahata, died on 18th August, 2011.

An application for grant of Letters of Administration was taken out.

In paragraph 9 of that application certain persons were named and described as being the legal heirs and representatives of the deceased, thus having a caveatable interest, who would succeed on intestacy and on whom the required citations/notices were to be served.

One of such persons was Ashismoy Chowdhury. After receipt of the notice he lodged a caveat on 23rd August, 2017 and also filed an affidavit in support thereof on 30th August, 2017.

Subsequently, an application was made stating that the said heirs said to succeed to the estate on intestacy were wrongly described and such legal heirs were Goutam Mahata, Sonali Tiweri, Rupali Mishra, Tapati Pandey and Sandhya Rani Mahata and for amendment of the application for grant of Letters of Administration, accordingly. Incidentally, Sandhya Rani Mahata died on 18th August, 2018.

The said application [Old GA/2607/2019, New GA/5/2019] was allowed by this court on 6th February, 2020 by directing amendment of the application for grant of Letters of Administration, as prayed for.

The application was duly amended incorporating the names of these persons as the heirs of the deceased, who would succeed on intestacy and thus having a caveatale interest.

This order has not been challenged and remains binding on the parties.

The application taken out before the learned single judge was for consequential orders further to the order dated 6th February, 2020 asking for discharge of the caveat lodged on 23rd August, 2017 by Ashismoy Chowdhury and for cancellation of the affidavit in support of such caveat filed on 30th August, 2017.

On a perusal of the impugned order dated 8th March, 2021, we are of the view that the facts were not at all correctly placed before the learned single judge. The learned single judge seems to have been told that in spite of the caveat and the affidavit in support of the caveat having been filed within time, it ought to be discharged. The reasons for such discharge it seems were not placed before his lordship. Had it been placed the impugned order dismissing the application would not have been passed.

At this point of time learned lawyer appearing for Ashismoy Chowdhury submits that an opportunity be given to his client to file an affidavit in opposition to this application.

We are of the view that there is no such scope. The order of 6th February, 2020 has not been challenged and is binding on the parties. Unless this substantive order is set aside or varied, there is no scope of refusing the consequential order, as prayed for, now.

We, accordingly, direct that the order dated 6th February, 2020 be fully effected by discharge of the caveat and cancellation of the affidavit in support thereof filed by Ashismoy Chowdhury.

The appeal is allowed. The stay application, GA/2/2021 is also disposed of.

(I. P. MUKERJI, J.)

(ANIRUDDHA ROY, J.)

pkd.