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Ct. 18
10.01.2022

**C.O. No. 1038 of 2020
IA No : CAN 2 of 2021
(Via Video Conference)**

**Smt. Sucharita Sarkar
Vs.
Sri Utpal Mukherjee**

Mr. Noni Gopal Chakraborty ... For the petitioner.

Mrs. Maheswari Sharma,
Ms. Tulika Roy ... For the opposite party.

The present revisional application under Article 227 of the Constitution of India is directed against the Order No. 80 dated December 2, 2019 passed by the 3rd Court of learned Additional District Judge, Hooghly in Probate Suit No. 05 of 2012.

The learned Trial Judge by the order impugned has dismissed an application filed by the petitioner for appointment of handwriting expert for the purpose of comparing the signature of the testatrix appearing in the alleged Will with that of her signature appearing in Exhibit – B series.

The petitioner in her application for appointment of handwriting expert has stated that the attesting witness Rama Ghosh has admitted the signature of the testatrix appearing in Exhibit – B series, such statement is not in dispute.

The Will and the signature of the testatrix appearing in the said Will has already been marked as Exhibit – 7 series, after objection.

The learned Trial Judge has dismissed the said application on the ground that the evidence of three witnesses in the suit has already been completed and the application has been filed with an object to delay the disposal of the suit.

The alleged will was never executed by the testatrix is one of the grounds on which the petitioner is objecting to the grant. The report of handwriting expert will be helpful to decide the said objection of the petitioner as such the prayer of the petitioner for appointment of handwriting expert to compare the signature of the testatrix with that of her said admitted signature cannot be denied solely on the ground that the hearing of the suit has been substantially progressed particularly when an admitted signature of the testatrix is available on record

The application for the aforesaid reasons deserves to be allowed, the order impugned is ,therefore, set aside.

The learned Trial Judge is requested to take appropriate steps for appointment of said handwriting expert as prayed for by the petitioner and to get the

report of the said handwriting expert on record as expeditiously as possible.

Any laches and/or negligence on the part of the petitioner in the matter of appointment of the said handwriting expert will disentitle her to get the benefit of this order and in that event the suit shall proceed without waiting for the report of the handwriting expert.

C.O. 1038 of 2020 is disposed of with the above terms without any order as to costs.

In view of the disposal of the revisional application itself, the application for extension of interim order being IA No : CAN 2 of 2021 has become infructuous and is dismissed accordingly.

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)

