

12.05.2022
Item No.42
Court No.18
AJ.

C.O. 3079 of 2008

**I.A. No. CAN 1 of 2009 (Old CAN 733 of 2009)
CAN 3 of 2011 (Old CAN 11116 of 2011)
CAN 4 of 2021
CAN 5 of 2022**

**Smt. Ratna Ghosh
-Vs-
Samir Kumar Neogi & Anr.**

Mr. Uday Sankar Bhattacharya,
Ms. B. Bhattacharya.
.....for the petitioner.

**In re : C.A.N. 4 of 2021
C.A.N. 5 of 2022**

The revisional application and the application for extension of interim order (CAN 733 of 2009) were dismissed for default on June 25, 2019.

C.A.N. 4 of 2021 is an application for recalling of the said order dated June 25, 2019 and C.A.N. 5 of 2022 is an application for condonation of delay in filing the said application for recalling of the said order.

Perused the applications. The delay has been satisfactorily explained, as such, condoned. It appears that the petitioner was prevented by sufficient cause from appearing before the Court when the matter was called on for hearing.

C.A.N. 4 of 2021 and C.A.N. 5 of 2022 are thus, allowed.

The order dated June 25, 2019 is recalled. C.O. 3079 of 2008 and CAN 733 of 2009 are restored to their original file and number.

In re : C.O. 3079 of 2008

The revisional application is taken up for disposal.

The present application under Article 227 of the Constitution of India is at the instance of an objector for grant of probate of the alleged last Will and Testament of one Santosh Kumar Neogi.

The plaintiff/opposite party no.1 being the named executor applied for grant of probate of the said Will, the application for grant is pending before the 8th Court of the learned Additional District Judge, Alipore, District- 24 Parganas (South) being O.S. No. 1 of 1995 as a contentious proceeding.

The petitioner in the said proceeding filed an application for dismissal of the said proceeding for non-compliance of the order for discovery.

The learned Trial Judge by the order impugned dated July 19, 2008 has refused to dismiss the said proceeding as prayed for on the ground that the said application was pending for a long time and thereafter the hearing of the suit has progressed substantially.

Learned advocate for the petitioner submits that the learned Single Judge of this Court by the order dated August 14, 2003 passed in C.O. 1638 of 1998 had directed the parties to affirm affidavits as to their respective documents within a period of two weeks from the date of communication of the said order to the Court below but such affidavit was not filed within the said period of time.

Delay in filing the affidavit as to documents relied on by the plaintiff does not entail dismissal of the suit under Order XI Rule 21 of the Code of Civil Procedure.

The order impugned, therefore, does not call for any interference.

C.O. 3079 of 2008 is dismissed without any order as to costs.

The learned Court below is requested to dispose of the said proceeding expeditiously.

In view of the dismissal of the revisional application, the connected applications being CAN 1 of 2009 (old CAN 733 of 2009) and CAN 3 of 2011 (old CAN 11116 of 2011) have become infructuous and are also dismissed as such.

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.)