

D/L
Item No. 14
12.12.2023
KOLE

**FAT 151 of 2023
With
IA CAN 1 of 2023
With
IA CAN 2 of 2023**

**Sri Dilip Kumar Gooptu
-Vs.-
Dip Kumar Gooptu**

*Mrs. Sonal Shah,
Mr. K. Shah,
Mr. Aniket Chowdhury,*

...for the appellant.

In Re: CAN 2 of 2023 in FAT 151 of 2023:

This is an application for condonation of delay of 65 days in presenting the appeal as noted by the Additional Stamp Reporter.

Causes shown being sufficient, we condone the delay.

The application for condonation of delay is, thus, allowed.

IA CAN No. 2 of 2023 is disposed of.

In Re: CAN 1 of 2023 in FAT 151 of 2023:

One Dilip Kumar Gooptu was a resident of the city of Kolkata. He was a man of wealth. He passed away on April 26, 2015, having made and published what is said to be his last Will dated October 21, 2009.

In that Will, the testator named one Santanu Mallick, as the sole executor. Santanu wrote a letter dated July 25, 2016 to the wife of the deceased namely, Smt. Sandhyasree Gooptu, which is to the following effect:-

“Respected Mrs. Gooptu,

Re: REQUESTING RELEASE FROM OFFICE OF EXECUTOR OF LATE SHRI DILIP GOOPTU’S WILL.

After considering my personal circumstances and the need to devote adequate personal time and attention in discharging my responsibility as Executor to Late Shri Dilip Gooptu’s will and related matters, I have come to the conclusion that it will not be possible for me to continue bearing the responsibility.

I am now residing – due to my official duties – at Mumbat, 1900 Kms away from Kolkata and this distance and my own responsibilities are creating a situation where I fear I will not be doing justice to the responsibility cast on me in executing the said will and also discharging related responsibilities like visiting Hon. Calcutta High Court from time to time, inspection of accounts, approving of documents etc. in a timely manner, which may cause difficulties and roadblocks for you and will adversely affect the entire process.

Having this in mind, I request you to release me from this responsibility of Executor of the will and make alternative arrangements latest by 31st July, 2016.”

Sandhyasree made an application before the Chief Judge at City Civil Court at Calcutta being LA No. 34 of 2016 praying for grant of letters of administration of the Will and testament dated October 21, 2009, made and published by Late Dilip Kumar Gooptu, in favour of Sandhyasree. On the said application general citation and special citation were served upon the heirs in intestacy of the deceased. As the matter was being decided, Sandhyasree passed away on October 8, 2020. Accordingly, LA No. 34 of 2016 abated.

On or about April 22, 2021, the testator's son, the residuary legatee, Dip Kumar Gooptu filed an application being LA No. 7 of 2021, before the Learned Chief Judge at City Civil Court at Calcutta praying for grant of letters of administration of Dilip's Will and testament dated October 21, 2009. Santanu's letter requesting to release him as Executor was annexed to the said application.

On September 14, 2022, when the matter came up before the Learned Chief Judge, City Civil Court at Calcutta, the learned Judge passed the following order rejecting Dip's application for letter of administration:-

"Ld. Counsel for the petitioner submitted that the Testator appointed Santanu Mallick as Executor of the last Will and testament. It is also submitted that the Executor was unable to come down to get the application as he is residing in Mumbai. As such the Executor expressed his desire to be released from carrying out the duty as executor. The petitioner filed a letter dated 25.07.2016 (Annexure 'C') by the executor Santanu Mallick where he requested for releasing from the responsibility of the Executor of the Will.

Heard. Perused the application as well as documents.

This Court is of the view that the instant application is not maintainable and do order can be passed in an application made by one of the beneficiaries of the Will to release the Executor as per the letter written by the Executor and made an annexure of this instant application."

Being aggrieved, the appellant has come up before us by way of this appeal.

We have heard learned Advocate for the appellant at length. We are told that when the appellant's mother had

applied for letters of administration, although the matter was being contested by one of the heirs in intestacy, the authenticity of Santanu's letter was never challenged.

Be that as it may, it would be desirable if the appellant/applicant produces a duly affirmed affidavit of Santanu stating that he is not in a position to discharge his duties as executor of Dilip's Will.

Since *prima facie*, there is no reason to doubt the authenticity of Santanu's letter, we are of the view that in view of his reluctance to act as executor, letters of administration has to be granted in favour of somebody and there is no reason why the same cannot be granted in favour of one of the legatees, being the son of the deceased. After all, the estate of the deceased has to be administered in accordance with his last wishes stated in the Will.

Accordingly, we set aside the order under appeal and remand the matter to the learned Trial Court for fresh adjudication in accordance with law. The applicant will produce Santanu's affidavit before the Learned Trial Court which will be taken on record and considered by the Learned Trial Court. Copy of the application for letters of administration should be served on the heir in intestacy who was contesting the application for letter of administration filed by Dip Kumar Gooptu's mother which abated because of her death. Such person would be at liberty to contest Dip's application for letters of administration.

All observations made in this order are *prima facie* and only for the purpose of disposing of this appeal. The

learned Trial Court is requested to decide Dip's application for letters of administration afresh, in accordance with law, without being influenced by any observation made in this order.

Learned Advocate for the appellant says that the application for letters of administration should be disposed of expeditiously by the Learned Trial Court. The appellant will be at liberty to make such prayer before the learned Trial Court.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)