

07.06.2023
Srimanta
Sl. No. 37
Ct. No. 652

IA No.:CAN/1/2019 (Old No.:CAN/8670/2019)
in
CO/2120/2019

Rina Mallick
-Vs.-
Ashim Kumar Ganguly @ Gangopadhyay & Ors.

Mr. Amitava Pain,
Mr. Partha Pratim Mukhopadhyay,
Mr. Nilmoni Das

...for the petitioner.

Mr. Rahul Sarkar,
Ms. Dipika Sarkar

...for the respondent nos. 7 & 8.

Service of notice upon the opposite parties in terms of order dated 03.02.2022 are taken on record. The opposite party nos. 1 to 6 are not represented.

This application under Article 227 of the Constitution of India has been preferred against the order dated 28th February, 2019 passed by the learned Civil Judge (Junior Division), 2nd Court, Sealdah in Title Suit No. 303/2004. By the impugned order learned Court below was pleased to reject the petitioner's prayer under Order XXVI Rule 9 of the code of Civil Procedure (CPC) on the ground that earlier application under Order XXVI Rule 9 of the code has been allowed and learned Advocate Commissioner also submitted his final report which has not been challenged by the plaintiff.

Petitioner as plaintiff filed a suit for declaration that plaintiff nos. 1 and 2 and the defendant nos. 1 to 6 are the legal heirs and representatives of deceased Santi Ranjan Ganguly and as such they are entitled to share equally all moneys deposited by the said deceased in the defendant No.7/ Bank. In order to adjudicate the real dispute involved in the case it was

necessary to make an Inventory Commissioner of the Savings Bank Account and other fixed deposits maintained by defendant no. 7 & 8/Bank since 1983 to 1999 for which a commission application under Order XXVI Rule 9 read with application under Order XI Rule 12 of the CPC were filed by the plaintiffs praying for discovery of the documents on oath as per the said provision. On the basis of the said prayer the Court below allowed petitioner's prayer under Order 26 Rule 9 with a direction upon the inventory Commissioner to make an inventory in terms of the points mentioned in the schedule of the petition.

Learned Counsel for the petitioner alleged that the Commissioner has not submitted his report in terms of all the points mentioned in the petition for inventory commission and he has only submitted report in terms of point nos. 1 and 2 of the petition partially and he did not submit any report on point no. 3. It is further submitted that details of total amount deposited and withdrawn from the said A/C No. 4890 and pension A/C 6143 of the deceased for the said period as sought for in the petition has not been reflected in the report. He further submitted that learned Commissioner has hurriedly submitted such report as there was a direction passed by this Court in CO No. 4089 of 2011 to submit the commission report within a particular date. Accordingly, the petitioner herein has made the second application but learned Court below after hearing the said application was pleased to reject the petitioner's application on the ground that the report has been submitted by Commissioner in respect of selfsame application under Order XXVI Rule 9 of the CPC.

The opposite party nos. 7 and 8 did not raise any objection to such prayer and contended that they are ready to carry out the order passed by the Court.

I have considered the submissions made by both the parties. On perusal of the schedule as to the points for inventory as appearing in the earlier application under Order 26 Rule 9 it appears that inventory was sought for on the following points:-

1. To ascertain Bank Account in the name of Santi Ranjan Ganguly maintained during the period from 1983 to 1999. The total amount deposited and withdrawn from the said account during the period and by whom withdrawn.
2. To ascertain pension account number in the name of Santi Ranjan Ganguly maintained during the period from 1983 to 1999. The total amount deposited and by whom withdrawn from the said account.
3. To ascertain fixed deposit account number in the name of Santi Ranjan Ganguly maintained during the period from 1983 to 1999. The total amount deposited and by whom withdrawn from the said accounts and the amount of withdrawal.

On perusal of the report submitted by Commissioner it appears that the Commissioner has submitted report on point nos. 1 and 2 of the schedule points for inventory partially but he has not submitted anything in his report in connection with point no. 3 of the schedule for inventory. Learned Commissioner in his report observed that as plaintiff is reluctant to complete the commission work, on the other hand, this High Court has directed him to submit report on 28th August, 2012, so it was not

possible for him to adjourn the commission work any further and accordingly he concluded the work and submitted the report. From the aforesaid facts and circumstances of the case it appears that the Commissioner's report is in complete for whatever reason. Under such circumstances, the Court below ought to have allowed the petitioner's prayer as mentioned in point no. 'c' of the second application under Order XXVI Rule 9 of the CPC and he also ought to have directed to inventory commissioner to report any other feature/information which the parties will bring to his notice at the time of commission work.

In view of above, the order impugned dated 28.02.2019 in connection with the disposal of application under Order XXVI Rule 9 of the CPC only in hereby set aside. Learned Court below is directed to appoint a fresh Inventory Commissioner within a period of three weeks from the date of communication of the order who will make inventory in terms of point 'c' of the schedule of the second application under Order XXVI Rule 9 of the CPC and learned commissioner will also consider any other feature/information/query made by any of the party or parties, which the parties will bring to his notice, for effective adjudication of the case at the time of making inventory commission and learned commissioner will submit a complete report preferably within a period of eight weeks from the date of his appointment. The cost of the Inventory Commission will be borne by the petitioner and learned Court below will decide the name of the Inventory Commissioner and the fees of the Inventory Commissioner. As the suit is pending since 2004 learned Court below will take steps for expeditious disposal of the suit and will make every endeavour to

dispose of the entire proceeding of the suit within a period of eight months from the date of communication of the order.

C.O. 2120 of 2019 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)