

01 5.1.2023

C.O. 2582 of 2022

Smt. Biva Biswas @ Biva Rani Biswas
Vs.
Krishnendu Ghosh and Ors.

Mr. Kuntal Ray
Ms. Priyanka Saha
Ms. Kowal Singh ... For the Petitioner.

Ms. Debjani Mukherjee
Mr. Shuvajit Bose For the Opposite party No. 1.

The petitioner in this application is an opposite party in a probate proceedings pending before the learned Additional District Judge 10th Court at Alipore South 24 Parganas being Original Suit No. 5 of 2014 and is directed against the Order dated 29.03.2022 passed by the learned Additional District Judge 10th Court at Alipore south 24 Parganas in the said suit. Learned Judge by the said order has kept in abeyance the petitions dated 08.09.2020 of Krishnendu Ghosh who is the opposite party no. 1 in the instant application.

The case of the petitioner may be summed up thus:

S.D.

One Rabindra Nath Ghosh @ Rabindra Nath Das Ghosh, since deceased being one of the named executors of the alleged last will and testament of one

Smt. Gouri Bala Ghosh filed an application for grant of probate before the learned District Delegate, 24 Parganas South at Alipore being Act 39 (Probate) Case No. 362 of 1998. The grant of probate of the said alleged will was subsequently objected by the petitioner and the opposite parties no. 2 to 8 herein and eventually the said proceedings became contentious and is now pending before the Court of Learned Additional District Judge 10th Court at Alipore South 24 Parganas and re-numbered as Original Suit No. 5 of 2014.

On 03.09.2019, the said Rabindra Nath Ghosh @ Rabindra Nath Das Ghosh being executor of the said will and plaintiff of Original Suit No. 05 of 2014 filed an application for discharge from the office of the executor on the ground of illness.

On the other hand Krishnendu Ghosh the opposite party no. 1 herein and son of said Rabindra Nath Ghosh filed two applications on the self-same day. In one of the applications the opposite party no. 1 prayed for a direction to permit him to proceed with the suit and in another application he prayed for conversion of the probate suit to a suit for grant of letters of administration.

By order dated 26.09.2019, the learned Trial Court was pleased to allow all the three applications by discharging the said Rabindra Nath Ghosh from the executorship of the said will and also permitted the said

Krishnendu Ghosh to act as a plaintiff of the said suit. Learned Trial Court further by the said order converted the probate suit to a suit for grant of letters of administration.

The petitioner being aggrieved by and dissatisfied with the order dated 26.09.2019 passed by the learned Trial Court moved a revisional application before this court, being C.O. 4316 of 2019.

On 20.12.2019 His Lordship the Hon'ble Justice Biswajit Basu was pleased to stay the operation of the order dated September 26.2019, passed by the learned Trial Court and directed the petitioner to cause service of notice upon the opposite parties.

On 07.01.2020 His Lordship the Hon'ble Justice Biswajit Basu was pleased to dispose the revisional application being C.O. 4316 of 2019 by setting aside the order dated September 26, 2019 passed by the learned Trial Judge. His Lordship was further pleased to observe as follows:

“The opposite party no. 1 being the sole surviving executor is the only competent person to apply for the grant of probate of the said will, the suit filed by him for the purpose of said grant cannot be allowed to lapse only because he is unable to take day to day steps in the suit due to his illness.

The opposite party no. 1 can seek appropriate

order from the court dispensing with his personal appearances before the Court on valid grounds unless such appearance is completely unavoidable.

The opposite party no. 1 therefore, granted liberty to apply before the learned Trial Judge seeking modification of the part of the order impugned whereby his prayer for discharge from the office of the executorship has been allowed.”

On 08.06.2020 the executor of the will and plaintiff of the probate proceedings died. Upon death of the executor of the will his son, namely, Krishnendu Ghosh i.e. the opposite party no. 1 herein filed two applications before the learned Trial Court on 08.09.2020, one for leave to proceed with the suit due to death of the plaintiff and another for conversion of the said suit from probate suit to a suit for grant of letters of administration.

By order dated 29.03.2022 learned Trial Judge kept the petitions dated 08.09.2020 in abeyance and fixed 18.06.2022 for awaiting further orders from this Court. The observation made by the learned Trial Judge is as follows:

‘On perusal of the record it appears that the Hon’ble Court in C.O. 4316 of 2019 has been pleased to stay the operation of the Order No. 128 dated 26.09.2019. The Order no. 128 is intertwined with the instant petition. in view of the stay of the order no. 128 the instant

petitions cannot be heard. The petitions dated 08.09.2020 are hereby kept in abeyance.

To 18.06.2022 for awaiting further order of the Hon'ble Court.'

The petitioner who is an opposite party in the probate proceedings being aggrieved by the said order has come up with the present application.

It is the contention of the petitioner that the learned court below while passing the impugned order failed to consider the records of the suit and the orders passed previously. It is further contended by the petitioner that the learned court below while passing the impugned order ought to have considered that the Civil Revisional Application being C.O. 4316 was disposed of on 07.01.2020 by setting aside the order being no. 126 and the learned court by the order being nos. 132 and 141 respectively recorded such fact.

Heard learned Advocate for the petitioner and the learned Advocates for the opposite parties. Perused the petition filed and the materials on record. In the probate proceedings although the petitioner is an opposite party and the application in which the order impugned was passed was filed by opposite party no. 1 of this instant application but the fact that the petitioner did not file objection to the application of the opposite party no. 1 and the said application was kept in abeyance by the

learned Trial Court for which the petitioner is aggrieved as the case is pending for a long period since 1998 the petitioner can be said to have locus standi to move this application.

Learned Advocate for the opposite party no. 1 has objected to the submissions of the petitioner. Upon perusing the order dated 29.3.2022 passed by the learned Trial Judge it appears that the learned Judge proceeded on the assumption that C.O. 4316 of 2019 is pending before this Court. It is on the basis of such assumption learned Trial Judge fixed 18.06.2022 for further order from this Court in C.O. 4316 of 2019, when the said revisional application was already disposed.

This Court while disposing the revisional application being C.O. 4316 of 2019 had set aside order dated 26.09.2019 passed by the learned Trial Court, permitting opposite party no. 1, Krishnendu Ghosh son of the sole executor Rahbindra Nath Ghosh to proceed with the probate proceedings/suit as plaintiff and discharging Rabindra Nath Ghosh from executorship of the will. Further the order converting the suit for probate into a suit for grant of letters of administration was also set aside.

Pursuant to the order passed by this Court in C.O. 4316 of 2019 the sole executor of the will Rabindra Nath Ghosh died on 8.6.2020, and on his death two

applications were filed by Krishnendu Ghosh opposite party no. 1 herein before learned Trial Court on 8.9.2020. In one application leave was prayed for to proceed with the suit as plaintiff and in another application prayer was made to convert the said suit to a suit for grant of letters of administration. Although this court by order dated 7.1.2020 passed in C.O. 4316 of 2019 had set aside order of learned Trial Court, converting the probate suit to suit for grant of letters of administration and order allowing Krishnendu Ghosh opposite party no. 1 herein to proceed with the suit as plaintiff and discharging Rabindra Nath Ghosh as sole executor from executorship but the order passed by this Court in C.O. 4316 of 2019 has become infructuous now on account of death of sole Executor Rabindra Nath Ghosh. Thus the learned Trial Court is required to dispose of the applications dated 08.09.2020 filed by the opposite party no. 1 Krishnendu Ghosh in the light of the changed circumstances in accordance with law.

Hence this revisional application stands allowed. The order dated 29.3.2022 passed by the learned Additional District Judge, 10th Court Alipore 24 Parganas (S) in O.S. 05 of 2014 is set aside.

Learned Trial Judge is directed to consider and decide the applications filed by the opposite party no. 1, Krishnendu Ghosh on 8.9..2020 in accordance with law

after hearing the parties.

As the suit is pending for a period of 8 years learned Trial Judge is requested to dispose the applications filed by opposite party no. 1, Krishnendu Ghosh within a period of two weeks from the next date fixed, and dispose of the suit within a period of 8 months from the date of disposal of the applications filed by opposite party no. 1.

Urgent certified photocopy of this order, if applied for, be supplied to the parties on priority basis.

(Biswaroop Chowdhury, J.)

