

04.12.2023
Court No. 19
Item no.10
CP

C.O. No. 3467 of 2023

Sri Subhas Sarkar

Vs.

Sri Swapan Sarkar

Mr. Bidhayak Lahiri

.....for the petitioner.

Despite service, none appears on behalf of the opposite party.

Affidavit of service is taken on record.

The issue involved is whether on a single prayer for adjournment made by the petitioner, the evidence should be closed.

The opposite party filed an application for grant of probate. The application became contentious and O.S. 02 of 2017 was registered. O.S. 02 of 2017 is pending before the learned Additional District Judge, 3rd Court, Barrackpore.

From the order impugned dated September 15, 2023, it appears that the learned court rejected the adjournment application filed by the petitioner and closed the evidence of the petitioner.

This court finds that the only ground on which the learned court below had rejected the prayer for adjournment was a direction of the learned coordinate Bench in C.O. 20 of 2020 dated February

17, 2022, permitting the learned court below to proceed in accordance with law, despite pendency of the revisional application.

In my view, such reason cannot be a ground for refusing an adjournment and closing the evidence.

The order impugned is set aside.

The learned court below is directed to fix a date for evidence of the petitioner, upon notice to the opposite party.

It is made clear that the evidence of the petitioner shall be concluded within a period of one month from the date of communication of this order. The petitioner will not be entitled to take any adjournment unless the reason is unavoidable. The opposite party will have the right to cross-examine. The order impugned is set aside.

The revisional application is disposed of.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)