

01.04.2024
Item No.12
RP
Ct. No.1

MAT 556 of 2024
With
IA No.CAN 1 of 2024

Smt. Sheuli Mazumdar (De)
Vs.
Sila Majumdar & Ors.

Mr. Partha Sarathi Bhattacharya, Sr. Adv.
Mr. Debdutta Raha
Mr. Raju Bhattacharyya
.....for Petitioner
Mr. Probal Kr. Mukherjee, Sr. Adv.
Ms. Shebatee Datta
.....for Respondent Nos.1 & 2
Mr. Surojit Dasgupta
Ms. Niharika Singh
Ms. Rupal Singh
Mr. Ashok Kumar Singh
.....for respondent nos.3,4 & 5

1. The fifth respondent in WPA 2221 of 2024 is the appellant in this appeal being aggrieved by the order and direction issued in the said writ petition by the impugned order dated 14th March, 2024. The first appellant is the elder daughter of the first respondent/writ petitioner and sister of the second respondent/writ petitioner. The matter concerns a fixed deposit lying with the 3rd respondent/bank, namely, the Bank of India, which is stated to be to the tune of Rs.1,28,29,703/- together with accrued interest. At the instance of the appellant, a criminal case has been registered against her mother and

sister, who have been arrayed as accused and the matter is now pending in the charge sheet no.77 of 2020 on the file of the Chief Judicial Magistrate, Alipur and the trial is yet to begin.

2. It is not in dispute that the respondent nos.1 and 2/writ petitioners had applied for grant of succession certificate under the provisions of Indian Succession Act, 1925 and the same has been granted by order dated 28th September, 2022. The learned Single Bench after taking note of the peculiar facts and circumstances of the case has directed that the amount, which is lying as fixed deposit with the Bank of India, be disbursed to the writ petitioner as they are being entitled to 2/3rd share of the amount together with interest and the remaining 1/3rd share is to be paid to the appellant/fifth respondent if she so desires to receive the same or be retained in the fixed account with the bank.
3. The learned advocate for the appellant submits that by virtue of the said order the appellant's right in the criminal proceeding, which is pending before the learned Chief Judicial Magistrate, Alipur, would be affected. The learned Single Bench has rightly not entered into the realm of the criminal proceeding as it would be beyond the jurisdiction of the writ Court to do so. The

learned writ Court, in our view, rightly took into consideration the succession certificate which has been issued by the concerned authority and to which the appellant is a party and the said succession certificate continues to remain valid as on date. Therefore, we find that the order and direction issued by the learned writ Court is an equitable order, more so, considering the relationship of the parties. However, we are conscious of the fact that the order and direction passed in the writ petition should not be in any manner used by the writ petitioners to advance their case before the criminal Court. This appears to be a genuine apprehension of the appellant as expressed by the learned advocate for the appellant before us. Therefore, we hasten to add that the order and direction issued by the learned writ Court, which in our opinion, is just and equitable, cannot be placed reliance upon by the respondents to defend themselves in the pending criminal case before the learned Chief Judicial Magistrate, Alipur.

4. So far as freezing of the bank account is concerned, we find that the learned writ Court rightly held that the Magistrate does not have jurisdiction to decide the rights of the parties to deal with the property-in-question. Thus, we find

no grounds to interfere with the order and direction issued by the learned writ Court and simultaneously making an observation that the findings rendered by the learned writ Court shall not be used as a defense in other civil proceedings which may be pending between the parties or to be initiated at a later stage.

5. The respondent/bank is directed to disburse the amount in terms of the direction contained in paragraph nos.18 and 19 of the impugned order within a period of two weeks from date.
6. The learned advocate for the appellant submits that the Court should issue certain direction to ensure presence of the respondent nos.1 and 2/writ petitioners before the criminal Court. Admittedly, the appellant is not residing in India and she is being represented by a power of attorney agent, who is a resident of Kolkata and the affidavit has been sworn by the said person, namely, Sri Prasanta Kumar De. The second respondent/writ petitioner is not permanently residing in Kolkata but frequently travels from Canada to Kolkata. So far as ensuring presence of the 2nd respondent/writ petitioner in the pending criminal case before the criminal Court we will be exceeding our jurisdiction if we make any observation in that regard in this appeal.

7. With the above observations, the appeal and the connected application are disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)