

IA No: GA 1 of 2024
APOT No. 299 of 2024
with
ATA No. 3 of 2023
IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

Jayanta Lall Seal
Versus
Trust Estate Mutty Lall Seal

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 18th September 2024

Appearance:
Mr. Debmalya Ghosal, Advocate
Mr. Arnab Dutt, Advocate
Mr. D. Mukhopadhyay, Advocate
for the appellant

Mr. Sandip Ghose, Advocate
Mr. D. Majumdar, Advocate
Mr. Sudersan Roy, Advocate
Mr. Debayan Ghosh, Advocate
for the respondent

The Court: We formally admit the appeal.

As the point appears to be very short we propose to dispose of it today itself dispensing with all formalities.

This appeal arises out of a judgment and order dated 12th July 2024 made by a learned single judge of this court in an application under section 74 of the Indian Trust Act, 1882.

The name of the trust is "Trust Estate Mutty Lall Seal". This trust was created on 27th January 1947.

Admittedly, by the deed of trust there ought to be ten trustees. At the time of institution of this case there were nine trustees described as respondents in the cause title. The tenth trustee Amiya Nath Sain had died. The appellant/petitioner Jayanta Lall Seal made a claim to be appointed as a trustee in his place and stead in terms of the trust deed.

By the impugned judgment and order the learned single judge directed *“the trust board particularly the trustees appointed from the branch of Gobinda Lal Seal to consider and dispose of the application submitted by the petitioner before them within one month from the date of communication of this judgment upon affording reasonable opportunity of hearing to the petitioner, in terms of the deed of trust”*.

It appears from the submissions made that the appellant/petitioner had participated in the exercise conducted by the trust board in terms of the impugned order. He is aggrieved by the decision taken by the trust board holding that Narendra Nath Seal has the right to be appointed as the trustee in place of the deceased Amiya Nath Sain.

Hence the appellant is not aggrieved by the impugned judgment and order but the result of it embodied in a decision of the trust board. According to the appellant, he should have been recommended to be appointed as trustee in terms of the deed of trust.

We are of the opinion that the learned single judge ought not to have disposed of the section 34 application by reference of the matter to the trust board but ought to have kept it pending to evaluate the result of the decision taken by the board. It would have been in the fitness of things if upon receipt of the decision of the trust board and considering any objection to it, the court would have decided the section 74 application as to who would legitimately be the trustee in place of late Amiya Nath Sain.

Accordingly we modify the impugned judgment and order dated 12th July 2024 by directing that the application (ATA No. 4 of 2023) would be pending. The decision of the board shall be placed before the court for consideration. Upon hearing learned counsel for the parties the application made thereafter be disposed of finally, as early as

possible preferably by 29th November 2024, subject to the convenience of the court.

Till the application is finally disposed of the tenth trustee i.e. Narendra Nath Seal should not participate in any meeting of the trustees. Any decision of the trust may be taken by nine trustees by majority.

The appeal (APOT 299 of 2024) and the connected stay application (IA No: GA 1 of 2024) are accordingly disposed of.

As affidavits were not invited, the allegations contained in the stay application are deemed to have been not admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose