A.No.1032 of 2023
in
T.O.S.No.22 of 2015
Reserved on : 15.12.2023

Pronounced on : 23.04.2024

A.A.NAKKIRAN, J.

This application is filed seeking a direction to the respondent Executor to disburse the sum involved in the bequest of Rs.30,00,000/- (Rupees Thirty Lakhs Only) made by the Testator Mr.PCD Nambia, to the applicant within a period of 30 days along with an interest at the rate of 9.25% per annum compounded annually from 27.05.2012 totaling to an amount of Rs.72,66,675/- from the date on which the Testator died along with 6% future interest p.a till the date of actual disbursal of the sum.

2. The learned counsel for the applicant submitted that the Provisions under Order 32 of Civil Procedure Code, 1908 and the relevant Civil Rules of Practice may not be strictly applicable to this proceeding because the suit already stands concluded by grant of probate. The present application is filed under Section 302 of the Indian Succession Act, 1925 seeking directions against the Respondent - State Bank of India, Securities & Services Division, Rajaji Salai, Chennai. The Respondent is the executor and

trustee appointed by the testator Mr.PCD Nambiar in his will dated 31.12.2009. Mr.PCD.Nambiar/Testator vide his last Will dated 31.12.2009, bequeathed a major part of his self-acquired properties for specified charitable institutions while reserving some of it to be bequeathed to certain members of his family. The present application concerns the bequest of an amount of Rs. 30,00,000/- (Rupees Thirty Lakhs Only) made by the Testator in favor of his grand-niece, the Applicant herein, who is the daughter of Dr. Shobana (daughter of the elder brother of Testator) and Dr.P.Gangadharan. He further submitted that the Testator died on 27.05.2012 at his residence in Chennai. Thereupon, the Respondent/Executor filed Original Petition No. 52 of 2012 before theHigh Court of Madras to prove the Will in common form and to probate thereof. Since there was an objection made against the grant of probate by one of the legal heirs of the Testator, the Petition was converted into a Testamentary Original Suit which was later renumbered as T.O.S No. 22 of 2015. On 20.12.2019, the contesting Defendant therein / legal heir of the Testator filed an affidavit withdrawing all her objections challenging the legality of the Will. This Court, after recording oral evidence of PW.1 to PW.3, delivered its decree and judgment dated 01.04.2021 probating the subject Will dated 31.12.2009.

3. The learned counsel for the applicant further submitted that despite the fact that there is enough sum of money left with the estate of the Testator after meeting the debts, funeral and testamentary expenses, income tax and other statutory liabilities, the Executor has failed to take any tangible step towards disbursal of the bequeathed sum to the Applicant. It may be taken into consideration that the Testator died on 27.05.2012 and the decree and judgment granting probate of the Will was passed only on 01.04.2021. The Respondent, being the Executor, is duty bound to perform its duties in a time bound manner and disburse the money that has been bequeathed by the Testator in favour of the Applicant. In spite of repeated requests made, the Executor has not taken any action and is delaying the execution and administration of the Will. The Applicant also served a legal notice dated 01.04.2022 on the Respondent Executor calling upon it to make the payment of the bequeathed sum of money to her. The Respondent Executor has neither replied to the same nor has fulfilled its duty as the Executor. As a matter of fact, the notice sent to the Respondent vide registered posts on 01.04.2022 and 07.04.2022 were returned with remarks 'no such department. Later, when it was addressed to the Regional Manager, Chennai

Zone - I, requesting him to place before the Respondent that the notice sent was taken. Even then, no reply has been made by the Respondent for the said notices. This clearly demonstrates the fact that the Respondent is deliberately shirking away from his bounden duty to execute the Will that was entrusted upon it. True copy of notices dated 01.04.2022 and 07.04.2022 are annexed with this affidavit for consideration of this Court. He further submitted that Ms.Deepti Gangadharan is a differently abled person who has been making brave efforts to lead a normal life. The amount that has been bequeathed by the Testator Mr.PCD.Nambiar with all his love and affection would help her in furthering his wishes, expressed through his will, towards bringing a degree normalcy in her life. The Executor is callously delaying the disbursal of the bequeathed sum of money, causing her serious hardships. The Respondent Executor has not furnished any explanation as to the cause of delay for disbursal of the bequeathed sum even after numerous inquiries. Since there is an undue and unjust delay on the part of the Respondent/Executor in performing its duty of taking steps for getting the Will probated and in disbursing the bequeathed sum, the Applicant is entitled to be compensated for the loss sustained on account of the illegal omission on the part of the Executor.

4. The learned counsel for the applicant further submitted that the respondent/ Executor being a commercial bank is unjustly retaining the sum bequeathed in favor of the Applicant and is making profits out of it. It goes without saying that the Respondent Executor bank indulging in commercial activities including advancing loans to customers, could have utilized the bequeathed sum also to their benefit. Even on a conservative estimate of commercial lending rate of 12% p.a. the Respondent stands to benefit by retaining the sum of money with it. The bequeathed sum of Rs.30,00,000/- is held by the Respondent/Executor from the date of expiry of the Testator till today. It is only just and fair that the Applicant be granted interest on the same, at the rate at which retail term deposit' received by the Respondent Executor bank as on the date of death of the Testator. As per the data provided in the official website of the Respondent Executor, rate of interest on term deposits made for 10 years as on 28.05.2012 was 9.25% p.a. compounded annually. The principal amount to be disbursed to the Applicant is Rs. 30,00,000/- (the bequeathed sum). At any rate, the Applicant is entitled to get the principal amount disbursed with an interest of 9.25% p.a. compounded yearly which is R, 42,66,675/-. The total amount

will thus come up to Rs. 72,66,675/-. Therefore, the Respondent Executor herein has to be directed to disburse the sum involved in the bequest of Rs.30,00,000/- (Rupees Thirty Lakhs Only), made by the Testator Mr.PCD Nambiar, to the Applicant within a period of 30 days along with an interest at the rate of 9.25% per annum compounded annually from 27.05.2012 totaling to an amount of Rs.72,66,675/-, from the date on which the Testator died along with 6% future interest p.a. till the date of actual disbursal of the sum.

5. The learned counsel for the respondent Executor submitted that the probate is issued by this Court on 13.03.2023 and the executor is taking steps to disburse the amounts to beneficiaries of the Will. As far as the applicant is concerned, she is suffering from cerebral palsy and she is being represented by her father and natural guardian. As far as the interest is concerned, the delay in obtaining the probate is due to the contesting of the OP into Testamentary Suit and the same was decreed on 01.04.2021, after that the probate was obtained only in March 2023 due to dispute regarding payment of Succession duty. As such there is no delay on the part of the executor in getting the probate from this Court. In any event, the will does

not envisage payment of any interest to the beneficiary. Therefore the payment of interest from the estate may not be feasible. He further submitted that Ms. Deepti Gangadharan is of sound mind and she has an account in her name and hence this Court may please permit the "Executor" to disburse the amount of Rs.30 lakhs in terms of the Will to Ms.Deepti Gangadharan.

6. Heard both sides.

7. Admittedly, the amounts have been kept in deposit by the testator and a bequest is made for the beneficiary to be entitled to the said amount. State Bank of India has also confirmed that the amount is in Term Deposit with the Bank bound by the interest rate as per the TDR (Term Deposit Receipt). The Applicant has sought for direction for payment of the said amount together with interest at the rate of 9.25% per annum. Being a term deposit the interest will be given only by such deposit receipt. Further, after the petition had been filed and the term deposit has not been specifically renewed, the interest payable in the said maturity amount, which is still available to the benefit of the Bank, can be decided by this Court.

Accordingly, the amounts available with the accrued interest as well as interest at the rate of 6% per annum simple on the deposit amount from the date of petition till the date of disbursement, shall be payable.

8. In view of the above direction, this application is partly allowed.

23.**04.2024**

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