

28.07.2025
SI No.15
Court No.16
(gc)

FA 90 of 2018
CAN 1 of 2017 (Old No: CAN 7731 of 2017)

Bijoy Mondal
Vs.
Anima Mondal & Ors.

Mr. Mahadeb Sarkar,
Mr. Bikash Chowdhury
...for the Respondents
Nos. 2, 3, 4 & 5.

1. The affidavit-of-service filed in Court today is taken on record.
2. The appellant seems to have lost interest in the matter. In spite of notice being served upon the appellant, the said appellant is not represented. It appears that a Coordinate Bench after recording the submission of the learned Counsel for the respondents on 23rd April, 2025 directed service of administrative notice upon the said appellant.
3. An undelivered envelope has been received by the department concerned with the postal remark "insufficient address". However, strangely, an affidavit-of-service affirmed on 28th July, 2025 filed in Court today shows that the appellant, Bijoy Mondal has received a notice dated 21st July, 2025 in which it was specifically mentioned that this matter shall be listed before this Bench on 28th July, 2025.

4. The appellant in spite of being aware of the matter being pending has decided not to appear in this proceeding. Previous orders also would show that the appellant was not represented after 3rd December, 2018. Moreover, no attempt has been made by the appellant since the filing of the application on 10th August, 2017 to move this application.
5. The petitioner is the executor appointed by the testator, Bhavendra Nath Mondal of his last will and testament dated 22nd December, 1996. Bhavendra Nath Mondal died on 12th May, 1997 leaving behind his wife and two sons. The grant of probate was contested by the five daughters of Bhavendra Nath Mondal. The learned Trial Court refused to allow the application for grant of probate on the ground that the executor has failed to remove the suspicious circumstances.
6. We have carefully read the impugned order and the materials available on record. The attesting witnesses seem to have not been able to prove the due execution of the Will as required under Section 63 of the Indian Succession Act. In absence of the appellant contradicting any such findings and the evidence-on-record does not prima facie show that the conclusion

arrived at by the learned Trial Judge on the basis of the evidence, is an absolute view and it is elementary that the execution is required to be removed all suspicious circumstances before probate can be granted, we do not find any reason to interfere with the judgment of the learned Trial Court.

7. Accordingly, the appeal and the application are dismissed.
8. However, there shall be no order as to costs.
9. The department is directed to communicate this order to Bijoy Mondal (executor) by Speed Post with A.D. within one week from date.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Apurba Sinha Ray, J.)