

(1985) 05 CAL CK 0022

Calcutta High Court

Case No: C.O. No. 495 of 1985

Smt. Dipali Hazra and Others

APPELLANT

Vs

Smt Jostnamoni Shar and Others

RESPONDENT

Date of Decision: May 7, 1985

Hon'ble Judges: Sudhir Ranjan Roy, J; Anil Kumar Sen, J

Bench: Division Bench

Advocate: Samarendra Nath Banerjee, for the Appellant; P.K. Sengupta, Bhudeb Bhattacharyya, for the Respondent

Judgement

Anil Kumar Sen, J.

The objectors of a probate proceeding are the petitioners before us in this revision application. The order impugned is one dated December 17, 1984 passed by the learned Additional District Judge, 2nd Court, Birbhum in the Letters of administration Case No 71 of 1981. The proceeding for the grant was initiated in the year 1980. In the year 1982 the present objectors-petitioners took a specific objection that the alleged signature of the testator of the will is not the genuine signature of the testator. An issue in that regard was raised as early as in the year 1982. It is very unfortunate that though such an issue was raised, no steps were taken on the part of the objectors to have a Handwriting expert appointed by the Court for examination of the signature on the will with any admitted signature of testator until the proceeding was taken up for peremptory hearing on December 17, 1984. On that date such an application was filed and it has been rejected solely on the ground of delay. That is the order now being impugned before us in the present revision application.

2. Mr. Banerjee, appearing in support of the revision application, has contended that though there was an admitted delay in teamster, the delay could not be made a ground for refusing an opportunity to lead evidence on should not be made a ground for refusing an opportunity to lead evidence on a vital issue as to whether the alleged will bears genuine signature of the testator or not. Mr. Sengupta has

seriously contested the point thus raised by Mr. Banerjee according to whom, the court acted rightly in the exercise of its judicial discretion in refusing such ablated prayer and as such, this court in the exercise of its revision power, should not interfere with such an order.

3. We have carefully considered the rival contentions put forward before us. It is true that we are dealing with a revision application, but in our opinion, even in such an application, this Court is required to contend as to whether in exercising a judicial discretion and in exercise of such a discretion in refusing such a prayer, the Court had acted in regular and lawful exercise of its jurisdiction. If the delay outwights then necessary for examination of the signature on the will by an expert certainly, the order must be upheld, but in our opinion, that cannot be so. It cannot be so for the simple reason that in a probate proceeding where the grant is being challenged on the ground that the will is not a genuine document and does not bear then real signature of the testator, it is very much necessary that every opportunity should be given to the parties to deduce evidence into that regard both for and against. Undoubtedly there was some delay and in our opinion, the delay was more due to the negligence on the part of the lawyers dealing with the case than the parties themselves. Such delay, in our opinion, cannot therefore, outweigh the necessity of gagging an opportunity to the objections even at this stage to adduce proper evidence in support of their claim that the will does not bear genuine signature of the testator.

4. This being the opposition, we propose to modify the order passed by the learned additional District judge who will not allow the prayer for appointment of handwriting Expert through Court since that would entail 2 to 3 years delay. On the other hand, the interest of the objector would be best served if we allow the objectors to examine a handwriting Expert of their own after such a Handwriting expert has been given an opportunity to look into the will and take appropriate photographs thereof in court. We therefore, direct that the objectors be given an opportunity to have the signatures on the will compared by a handwriting Expert of their own and the court is directed to give all reasonable opportunities to such an expert to take photographs and make necessary inspection of the will in the presence of the parties. This must however, be done within a time-schedule of three months from the date of communication of this order to the court below. The revision application is disposed of accordingly. If the objectors fail to complete it within the course of three months as aforesaid, the prayer for examination of a handwriting Expert will stand refused. The objectors will also be allowed to file two registered documents alleged to bear the genuine signatures of the testator and to prove the same.

There will be no orders as to costs.