OD-23

ORDER SHEET

TS/8/2018
IA NO: GA/11/2020 (Old No. GA/567/2020)
GA/12/2021

IN THE HIGH COURT AT CALCUTTA
Testamentary & Intestate Jurisdiction
ORIGINAL SIDE

IN THE GOODS OF:
CHAMPALAL BHANDARI (DECEASED)
-AND-
HIRALAL BHANDARI
-VS-
BHAWARLAL BHANDARI

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : June 26, 2023.

Appearance:
Mr. Kaustav Das, Adv.
Ms. Shreya Trivedi, Adv.
... for the petitioner.

Ms. Sweta Gandhi, Adv.
... for the executors.

Ms. Nilanjana Adhya, Adv.
Mr. Arindam Paul, Adv.
... for the caveator.

The Court: The applicant Ganges Manufacturing Company Limited has filed the present application being GA/12/2021 praying for a direction upon the executors and the caveator for release of an amount of Rs.2,91,65,506.80 being the decree passed by the learned Judge, Commercial Court at Alipore in Money Suit No. 1 of 2019 *(Ganges Manufacturing Company Limited vs. Bhawarlal Bhandari and Ors.)*.

Initially the executors had filed an application in PLA No. 342/2015 for release of the amount in favour of the creditors but the caveator has raised objection and accordingly, by an order dated 22nd August, 2016 this court has passed the following order :-

> *"Since the business of the proprietorship firm of the deceased has not been continued by the executors or either of them after his death, there may not be any pressing need for the creditors to be paid, particularly at the behest of the executors. However, it will be open to the creditors to apply to this Court for release of the payments as may be due to them, upon establishing the individual debts due.*
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> *The caveator has also to be put on terms. Ordinarily, the executors could have discharged the debts of the alleged testators on their implied undertaking to maintain accounts and to make good the loss to the estate in the event any loss was discovered. However, since the payments allegedly due to the creditors of the firm have not been made in view of the anticipated objection and the present vehement protest by the elder son of the alleged testator, the caveator is put on notice that in the event claims on account of interest are made or established by any of the creditors of the firm or of the alleged testator, including the three mentioned hereinabove, the interest would be payable by the caveator with effect from the date of death of the alleged testator, subject to the caveator's right to recover the amount from the executors if the Will is not proved.*
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> *Since the Will, prima facie, appears to be genuine and it was duly registered and the grounds for attacking the Will are weak, no immediate order is made on the caveator's application for the appointment of an administrator pendente lite or the appointment of a chartered accountant to assess the extent of the estate. However, such prayer may be revived upon any inappropriate conduct of the executors being cited prior to the grant being made.*

The executors have submitted that the money lying in the Federal Bank account of the branch or the payments that have come in since the death of the deceased have been invested by way of fixed deposits and there are four deposits now of value of about Rs.1.71 crore; Rs.19.51 lakh; Rs.8.43 lakh; and, Rs. 1.94 lakh. The executors will ensure that if future payments come into the account of the firm, fixed deposits are made every time the balance in the current account crosses Rs.1 lakh."

The caveator being aggrieved with the order dated 22nd August, 2016 has preferred an appeal being APO/289/2016 and the Appellate Court had disposed of the said appeal on 28th August, 2019 by passing the following order :-

"On such considerations, we find that the observations made by the Learned Single Judge are not unwarranted. The Learned Single Judge was not unmindful of the fact that the executor may not also be able to prove the Will and the consequences have also been mentioned in the order by observing that interest would be payable by the caveator with effect from the date of death of the alleged testator subject to the caveator's right to recover the amount from the executor as if the Will is not proved. The conditions put both the parties on alert.

On such considerations, we do not find any reason to interfere with the order passed by the Learned Single Judge. The appeal stands dismissed. However, there shall be no order as to costs.

The learned counsel appearing on behalf of the executor has submitted that subsequent to the impugned order, the creditors have initiated appropriate proceedings for recovery of their dues and in view thereof, the cross-objection as on date has now become infructuous. The cross-objection accordingly stands dismissed as infructuous."

In the meantime the applicant/creditor had initiated the Money Suit No. 1 of 2019 against the executors as well as the caveator and the learned Commercial Court at Alipore had disposed of the said suit on 3rd March, 2020 by passing the following decree :-

> "that the instant suit be and the same is decreed as per the petition under Order 12 Rule 6 read with Section 151 CPC dated 13.02.2020, on contest against Defendant nos. 3, 4 and 6 and on *ex-parte* against the Defendant nos. 1 and 2 and the name of Defendant no.5 was expunged vide order dated 24.02.2020.
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> 16. The Defendants are directed to pay Rs. 1,69,56,961 (one core sixty nine lac fifty six thousand nine hundred sixty one only) with rate of interest 15% with effect from 15th August, 2015 till 20th January, 2020 and the Defendants are further directed to pay interest on the said amount at the same rate till payment."

Now in terms of the decree, the applicant/creditor prays for release of the said amount as the creditor has established his individual dues in terms of the order dated 22nd August, 2016.

Counsel for the caveator submits that the applicant/creditor has obtained *ex parte* order without service of writ of summons upon the caveator and the caveator has already filed an appeal against the judgment and decree passed by the learned Judge, Commercial Court dated 3rd march, 2020.

Learned counsel for the applicant/creditor submits that the decree was passed in the month of March, 2020 but till date, the caveator has not obtained any order of stay and as such no adjournment can be given to the caveator and prays for passing an appropriate order for release of the amount, as claimed by the applicant.

Counsel for the executor submits that if any order is passed for release of the payment, it can be released from the estate of the deceased pending in the name of the deceased in several banks.

Considered the rival submission of the respective parties. Perused the materials on record and the orders passed by this Court as well as the Appellate Court.

By an order dated 22nd August, 2016, this Court has directed that the creditor to apply to this Court for release of the payments as may be due to them, upon establishing the individual debts due. Now, the applicant/creditor has established his right after obtaining decree from the Judge, Commercial Court in Money Suit No. 1 of 2019. The Appellate Court by an order dated 28th August, 2019 held that “the interest would be payable by the caveator with effect from the date of death of the alleged testator subject to the caveator’s right to recover the amount from the executor if the Will is not proved.”

In view of the above, this Court finds that the caveator is entitled to get the amount as claimed by the applicant/creditor and accordingly, the executors are directed to release the principal amount of Rs.1,69,56,961/- from the estate of the deceased in favour the applicant/creditor and the caveator is directed to pay the interest over the said amount at the rate of 15% from the date of death of the testator till the payment of the said amount is made. The executors are directed to pay the amount of Rs.1,69,56,961/- to the creditor within six weeks from date. It is made clear that the caveator is entitled to claim the interest from executors if Will is not proved.

GA No. 12 of 2021 is thus disposed of.

(KRISHNA RAO, J.)

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