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ORDER SHEET

IA No.GA 5 of 2023
IN
PLA 73 of 2021
IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION
ORIGINAL SIDE

IN THE GOODS OF :
SAJJAN KUMAR MODY, DECEASED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 2nd March, 2023.

Ms. Suchishmita Ghosh Chatterjee, Ms. Amrita
Panja Moulick, Advocates for the petitioner.
Mr. Raghunath Ghose, Adv. for executor.
Mr. Dhiraj Kr. Gupta, Adv. for wife of the deceased.

The Court : This is an application by the sole daughter of the deceased whose Will has been placed for obtaining probate by filing the petition for grant being PLA 73 of 2021. The applicant has received the special citation on 15th November, 2022 which was issued by this Court in terms of the order dated 7th September, 2022 (wrongly referred to as order dated 30th September, 2022) as no order dated 30th September, 2022 as referred to in the citation is available with the records. The order for issuance of citation was passed on 7th September, 2022 in GA 3 of 2022 filed in PLA 73 of 2021 wherein the matter was made returnable after eight weeks. The applicant was therefore required to file the caveat as per the provision of Chapter XXXV Rule 12 of the Original Side Rules of this Court within the time specified. The applicant says that she is not a resident of the town of

Kolkata and as such could not file the caveat in time and should be granted benefit of longer time for filing the caveat to object the grant.

The applicant has also raised an issue of fraud in respect of her consent being obtained by her uncles. The applicant had filed a consent affidavit affirmed on 7th October, 2022. The applicant now resiles out of the consent as granted by her through the affidavit dated 7th October, 2022 alleging fraud. The applicant is also seeking extension of time to file caveat so that an affidavit in support thereof can be filed within eight days from the lodging of the caveat.

The propounder objects to the application on two-fold grounds. Firstly, it is submitted that there has been long delay in approaching the court for extension of time to lodge caveat and the explanations given in the affidavit in support of the Master's Summons are not adequate to grant such extension. Secondly, it is submitted that by filing the consent affidavit dated 7th October, 2022 the applicant has waived her right to object to the grant.

Admittedly, the applicant is the sole daughter of the deceased. The applicant therefore has a caveatable interest and is also required to be cited unless she consents to the grant.

The issue as to the fraud said to have been perpetrated on the applicant by her uncles for obtaining the consent affidavit of the applicant dated 7th October, 2022, in my opinion, cannot be gone into by this Court while exercising testamentary jurisdiction even though the same may fall for consideration indirectly while addressing an issue as to whether by filing of the consent affidavit the caveatable interest as available to the applicant has

been waived or not, in view of the limited jurisdiction available to this Court while exercising testamentary jurisdiction. The probate court can go into the fraud in respect of the Will as it only decides the genuineness of the Will, the testamentary capacity of the testator/testatrix and as to whether the Will is a product of fraud, forgery, undue influence, coercion or is tainted with suspicious circumstances. The fraud said to have been perpetrated on the applicant as alleged cannot therefore be effectively gone into by the probate court due to its restricted jurisdiction even though it may be attached to one of the issues that may be raised if the probate proceeding is ultimately tried as a testamentary suit.

The affidavit of consent dated 7th October, 2022 cannot at this stage be accepted as a waiver of the applicant's right to object to the grant, particularly when she alleges fraud perpetrated on her while obtaining the consent.

The applicant has already affirmed an affidavit to be filed in support of the caveat to object the grant.

However, so far as the extension of time to file caveat and automatic extension of time to file affidavit in support thereof, I find that sufficient cause has been made in support of the cause which prevented the applicant from lodging the caveat and filing affidavit in support thereof within the specified time.

In the aforesaid facts and circumstances, being satisfied with the explanation given by the applicant, I extend the time for filing the caveat along with the affidavit in support thereof till 6th March, 2023. The department shall accept the caveat as also the affidavit in support of the

caveat if filed within 6th March, 2023.

Before parting since it has been brought to the notice of this Court that the widow of the deceased has already filed a caveat objecting to the grant followed by an affidavit in support thereof. The probate proceedings has already assumed a contentious character and the application being PLA 73 of 2021 has to be treated as a contentious cause. In order to save time and expedite the matter in spite of asking the propounder to make a formal application for declaring the petition for grant of probate being PLA 73 of 2021 to be contentious, I direct the department to mark PLA 73 of 2021 as a contentious cause and allot testamentary suit number to the same so that the application for grant of probate can be tried and determine as a testamentary suit. This order declaring the probate proceeding to be a contentious cause is not dependent on the filing or non-filing of the caveat and affidavit in support thereof by the applicant as her mother has already objected to the same.

Nothing further remains to be adjudicated in the application.

The application is accordingly disposed of.

Since I have not called for any affidavit, the allegations contained in the application are deemed to have not been admitted by the propounder.

(ARINDAM MUKHERJEE, J.)