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Appellant Vs. Respondent

Appellant Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/1060025

Court : Kolkata

Decided On : Aug-13-2013

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER
SHEET GA No.2872 of 2012 PLA No.10 of 2002 IN THE HIGH COURT AT CALCUTTA Testamentary & Intestate Jurisdiction IN THE GOODS OF: BIMAL SARKAR (DECEASED) BEFORE: The Hon'ble JUSTICE PATHERYA Date :

13. h August, 2013.

Mr.Tridib K.

Sarkar, Mr.S.Balial for the petitioner.

The Court : By this application the petitioner seeks grant of probate in terms of order dated 29th August, 2007.

In the said order it was recorded that no affidavit in support of the caveat had been filed by the caveator and it was on this premise that by the said order the petitioner was directed to be entitled to obtain probate as a non-contentious cause.

In couRs.of hearing of this application the department was directed to submit a report.

Such report has been filed and from a reading thereof it appears that not only was a caveat filed by the caveator Sr.Bijon Sarkar but an affidavit in support of the caveat has also been affirmed on 23rd December, 2003 and filed on 24th December, 2003.

The said affidavit in support of the caveat has also been produced in Court.

Therefore, one cannot shut ones eyes to the affidavit in support of the caveat which has become a part of the record of this Court.

Accordingly, no order can be passed treating PLA 1.of 2002 as a non-contentious cause.

In view of the affidavit filed in support of the caveat, let the same be treated as written statement and the application for grant of probate be treated as plaint.

Let PLA 1.of 2002 accordingly be treated as a contentious cause and be numbered accordingly.

Let the said be effected by the department within three weeks from the date of receipt of this order.

As no copy of the affidavit in support of the caveat has been received by the applicant herein, let a copy of the affidavit in support of the caveat be furnished to the applicant executor.

This order is passed in view of the records produced by the department before this Court.

The applicant will be at liberty to mention the matter for early hearing before the appropriate Court.

Report filed by the department be kept on record.

In view of the aforesaid, this application is disposed of.

Department and all parties to act on a photostat signed copy of this order on the usual undertakings.

(PATHERYA, J.) pa

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