

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Aug-20-2013

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

GA No.2157 of 2013 GA No.2018 of 2013 PLA No.88 of 1976 IN THE HIGH COURT AT CALCUTTA Testamentary and Intestate Jurisdiction ORIGINAL SIDE IN THE GOODS OF : SUBODH GOPAL BOSE (DEC) Appearance: Mr.R.L.Mitra, Adv...for the petitioner.

BEFORE: The Hon'ble JUSTICE PATHERYA Date :

20. h August, 2013.

The Court : By this application, the receiver Sr.Aloke Sen seeks to modify the order dated 15th July, 2013.

By the said order the executor-cum-receiver was directed to deposit a sum of Rs.5,26,815/- to the estate of Subodh Gopal Bose (Deceased) within a week from the date of receipt of the order.

It has been contended on behalf of the receiver that consent was given by the legatees for enabling him to avail of financial assistance of Rs.3.50 lakh and Rs.1.70 lakh in 2008.

In fact, an indemnity bond was also furnished by him in respect of the advance of Rs.2 lakh taken by him.

Therefore, monies realized by him is with the consent of the legatees.

The legatees also agreed that the personal loan taken by him be refunded after sale of the movable or immovable properties of the estate was effected.

Therefore, the question of making immediate payment of the loan taken does not arise in the circumstances aforementioned and the order dated 15th July, 2013 be accordingly modified.

This has been opposed on behalf of Sampa Sarkar and the executor to the estate of Gita Dutta on the ground that neither Sampa Sarkar nor the executor of Gita Dutta agreed to repayment of the loan taken by the receiver upon sale of the properties of the estate.

Therefore, the order dated 15th July, 2013 need not be modified.

Having considered the submission of the parties, Sr.Aloke Sen, the executor was appointed as receiver over the assets of the estate and, therefore, all the assets of the estate was held by him in trust for and on behalf of the estate.

It, however, appears that during his tenure, as a receiver, a personal loan of Rs.5,26,815/- was taken by him.

produced by the receiver-applicant No document has been evidencing consent legatees permitting him to take a loan of the said sum.

of the The said sum has been realized by him on his own and although reliance is sought to be placed on letter dated 04.11.2008, the said letter is only in respect of financial assistance received by the applicant for his daughters wedding in 2008.

Therefore, there is no document to evidence consent of the legatees with regard to the personal loan taken by the receiver.

The documents sought to be relied upon are not only undated, but have been issued by only three of the legatees.

Two of the legatees namely, Sampa Sarkar and the executor to the estate of Gita Dutta, have not given any consent for monies to be repaid out of his share in the estate which he will receive on grant of probate.

Therefore, what emerges is that the realization of sums from the estate by the applicant-receiver was without any authority and in breach of the trust reposed in him.

Accordingly, the order dated 15th July, 2013 calls for no interference.

The receiver is, however, directed to file his accounts for the period January, 2010 to January, 2012 within three weeks from the date of receipt of this order.

Matter to appear four weeks hence as To be mentioned. In view of the aforesaid, this application is disposed of.

As no affidavit-in-opposition has been filed, the allegations contained in the petition is not admitted.

Department and all parties concerned are to act on a signed photocopy of this order on the usual undertakings.

(PATHERYA, J.) A/s.

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