

ORDER SHEET
TS/5/2007
IA NO: GA/1/2013 (Old No. GA/1745/2013)
IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY & INTESTATE JURISDICTION
ORIGINAL SIDE

IN THE GOODS OF :
PRAVIN KUMAR KOTHARI (DECEASED)
AND
ASHOK KOTHARI
Versus
DIPTI BAVISHI

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
Date : 17th August, 2021

Appearance:
Mr. Debdutta Sen, Adv.
Mr. Soumabho Ghose, Adv.
Mr. Rishav Dutt, Adv.
...for plaintiff
Mr. Pradip Kumar Sarawagi, Adv.
...for Caveatrix

The Court : This matter has been mentioned on behalf of the plaintiff/propounder. Probate was granted in favour of the propounder by a judgment and order dated August 17, 2020.

Learned counsel for the propounder says that initially probate had been granted ex parte in favour of the propounder. Such grant was revoked by this Court by a judgment and order dated February 20, 2006. The operative portion of the said order reads as follows:-

“Accordingly, the grant of probate to the said Will is revoked and special citations shall be served by the ld. Registrar-in-Insolvency once again upon the learned Advocate-on-record of the petitioner to take step in accordance with law. It is made clear in the event no lawful step is taken by the petitioner within the time stipulated by law intending to contest the application for grant of probate, this order will stand recalled and probate granted by this Court will revive. I direct the propounder for

the time being to surrender the original probate to the Registrar-in-Insolvency.”

The aforesaid revocation order was affirmed by a Division Bench of this Court. The decision is reported at AIR 2007 Calcutta 21.

Mr. Sen, learned counsel for the propounder says that the department is now saying that since the original probate that had been earlier granted had been surrendered by the propounder to the department, returning the same to the propounder would suffice and no fresh probate need be issued. Mr. Sen disputes such position. According to him, once the grant of probate was revoked, the probate ceased to exist.

I entirely agree with Mr. Sen. The probate that was granted earlier does not exist any more in view of the same having been revoked by this Court.

The department is hereby directed to issue fresh probate in favour of the propounder as directed by my judgment and order dated August 17, 2020. Let this be done expeditiously.

(ARIJIT BANERJEE, J.)

sb.