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**IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Civil Revisional Jurisdiction**

C.O. 39 of 2024

**Sri Sunil Kumar Rathi
Vs.
Sri Shree Kumar Toshniwal**

Mr. Milindo Paul
Mr. Nabankur Paul
Ms. Sutapa Sen Paul
Ms. Bedasruti Bose
Mr. Subham Das
... for the petitioner

Mr. Suresh Kumar Mitruka
Mr. Aayush Mitruka
Ms. Shruti Yadav
Mr. Sujit Swani
... for the opposite party

Affidavit of service filed on behalf of the petitioner is taken on record.

This civil revisional application under Article 227 of the Constitution of India has been preferred by the petitioner against Order No.3 dated 23rd March, 2023 passed by the learned Civil Judge (Senior Division), Siliguri, District Darjeeling being the learned District Delegate, Siliguri in Misc. Judicial Probate Case No.82 of 2022 presently pending before the Court of the learned Additional District Judge, 1st Court, Siliguri, Darjeeling registered as O.C. Probate Case No.11(6) of 2023.

The brief fact of the case is that the opposite party being the executor of last Will and Testament of Late Sudha Devi Rathi preferred an application under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of the aforesaid Will before the learned Civil Judge (Senior Division) and District Delegate at Siliguri registered as Misc. Judicial Probate Case No.82 of 2022. The petitioner appeared before the learned District Delegate and filed an application seeking time to file written objection. The learned District Delegate, Siliguri finding the matter to be contentious sent the records to the learned District Judge, Darjeeling along with all documents lying therewith. Being aggrieved by and dissatisfied with the impugned order, the petitioner has preferred the present revisional application.

Mr. Nabankur Paul, learned Advocate for the petitioner submits that the learned District Delegate, Siliguri did not afford opportunity to the petitioner to file his written objection in terms of Section 288 of the Indian Succession Act, 1925 and instead sent the case records to the learned District Judge, Darjeeling which is palpably inappropriate and requires to be set aside giving opportunity to the petitioner to file written objection. In light of his aforesaid submissions, he prays for appropriate direction.

Mr. Suresh Kumar Mitruka, learned Advocate appearing on behalf of the opposite party submits that the learned District Delegate, Siliguri has rightly sent the matter to the learned District Judge, Darjeeling since it became contentious upon prayer of the petitioner to file written objection. Thus, the impugned order does not call for interference. He also files copy of the orders passed by learned Additional District Judge, Siliguri and indicates that several adjournments have been taken by the petitioner to file his written objection. In light of his aforesaid submissions, he prays for dismissal of the revisional application.

It is not in dispute that on 23rd March, 2022 the petitioner entered appearance and prayed for time to file written objection. The learned District Delegate, Siliguri holding the matter to be contentious sent the records to the learned District Judge, Darjeeling. The Explanation to Section 286 of the Indian Succession Act, 1925 provides that the word '*Contention*' means the appearance of anyone in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding. There cannot be any manner of quarrel that the petitioner entered appearance and informed the court that he would file written objection which suffices that the petitioner appeared to oppose the proceeding. Section

288 of the Indian Succession Act, 1925 provides as hereunder :

“288. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.- *In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petitioner, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorised to do; and, in that case, the same shall be sent by him to the District Judge.”*

Bearing in mind the above provisions, since the application before the learned District Delegate, Siliguri became contentious, the learned District Delegate, Siliguri has rightly sent the records to the learned District Judge, Darjeeling. Therefore, the order impugned does not call for interference.

Accordingly, the revisional application being **CO 39 of 2024** stands dismissed.

Interim order, if any, stands vacated.

All connected applications, if any, stands dismissed.

Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all necessary legal formatives.

(Bivas Pattanayak, J.)