

OD-3

ORDER SHEET

WPO No.933 of 2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

KUSHAL KANTI DALUI
VERSUS
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 13th November, 2024.

Appearance:

Ms. Raghunath Chakraborty, Adv.
Ms. Supratik Sasmal, Adv.
Sonali Sengupta, Adv.
...for the Petitioner.

Mr. Ayan Banerjee, Adv.
Mr. Oindrila Chatterjee, Adv.
.. for the Respondents.

1. A probate proceeding was filed by the petitioner which was later withdrawn in terms of the order dated 26th July, 2024 passed in IA NO. GA/2/2024 in PLA 432/2022 [In The Goods of Gita Rani Digar (Dec)].
2. The petitioner withdrew the original Will dated 4th May, 2018 and the maximum ad valorem Court Fees and submitted the Court Fees before the Collector for refund of the money. The prayer for refund is pending consideration.
3. The petitioner prays for refund of the ad valorem Court Fees of value Rs.50,000/-(Fifty Thousand Rupees) only.
4. Learned advocate representing the State respondents relies upon the instruction forwarded by the Deputy Secretary (Technical), Finance (Revenue) Department dated 1st July, 2024 addressed to the Collector of

Kolkata (Stamp and Revenue) mentioning that the Court Fees are administered by the Judicial Department and the Department has observed that any amount involved in Court Fees can be refunded by the Collector only if an order for refund is passed by the Hon'ble Court.

5. In **WPA 2893 of 2020 (Sanjib Kumar Ghosh versus State of West Bengal and Ors.)**, this Bench passed judgment on 16th of August, 2024 in a similar issue. Direction was passed upon the Collector to take return of the original unused Court Fees only if the same is found to be genuine and proper and to refund the amount subject to payment of the processing fees.
6. In the said judgment, the Court took note of the decision passed by this Court in the matter of **Eagle Plywood Industries Private Limited versus A.G.M. and Others** reported in **69 CWN 1025** wherein the Court held that the Court has the inherent jurisdiction to order for refund of Court Fees in appropriate case, to do real and substantial justice. Such appropriate cases are where mistakes or inadvertence or on wrong interpretation of law, excess Court Fees have been paid or realised.
7. The Court also took note of the order passed by the Hon'ble Supreme Court in **Special Leave Petition (Civil) Nos. 3063-3064 of 2021** in the matter of the **High Court of judicature at Madras represented by its Registrar General versus M.C. Subramaniam and Others reported in 2021 3 SCC 560** wherein the Court held that in case of out of Court settlement of dispute in between the parties, the parties would be entitled to refund of the Court Fees.

8. In the instant case, it has been submitted that the dispute between the parties has been settled out of Court and the petitioner does not intend to proceed with the probate proceeding any further.
9. In such a situation, the dictum of the Hon'ble High Court in the matter of **M.C. Subramaniam and others** (supra) would come into play.
10. In view of the above, the instant writ petition is disposed of by directing the Collector of Calcutta to refund the value of the ad valorem Court Fees deposited by the petitioner subject to payment of the processing fees, if any.
11. Steps for refund shall be taken at the earliest but positively within a period of eight weeks from the date of communication of this order.
12. The writ petition stands disposed of.
13. Let the instruction forwarded by the Collector of Kolkata be retained with the records.
14. Certified copy of this order, if applied for, shall be made available to the parties.

(AMRITA SINHA, J.)