



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 7490 OF 2023

(ADV. NARENDRAKUMAR RATANLAL PARASHAR..VS.. RATANLAL ANANDILAL SHARMA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

The Petitioner in person.
Shri Uday Changle, Adv. h/f. Shri Anand Parchure, Adv. for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 02, 2024.

1. Heard.
2. In this writ petition the challenge is raised to the order dated 27/09/2023 passed below Exh.14 by the Civil Judge Senior Division, Hinganghat in Probate Case No. 01 of 2020, thereby allowing the application filed under Section 10 of the Code of Civil Procedure and thereby staying the Probate Application No.01 of 2020 till disposal of the Regular Civil Suit No. 20 of 2019.
3. The petitioner-in-person submits that the learned trial Court has committed an error in staying the probate proceedings, ignoring that Section 10 of the Code of Civil Procedure applies to the suit and not to the probate proceedings.
4. In reply, the learned counsel for the respondent has pointed out Section 268 of the Indian Succession Act, 1925, says that the proceedings of the Court of the

District Judge in relation to the granting of probate and letters of administration shall be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908.

5. It is further pointed out that as per Section 141 of the Code of Civil Procedure which says that, the procedure provided in this Code in regard to the suit shall be followed as far as it can be made applicable in all the proceedings in the Court of civil jurisdiction. He, therefore, submits that the learned trial Court has not committed any error.

6. The petitioner in person, while pursuing his point that Section 10 of the Code of Civil Procedure, 1908 will not apply to the probate proceedings, has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Balbir Singh Wasu ..vs. Lakhbir Singh*, reported in **(2005) 12 SCC 503** and the judgment of Gujrat High Court in the case of *Smt. Multivahuji Goswami Goverdhaneshji Girdharlalji ..vs.. Smt. Kalindivahuji and others*, reported in **AIR 1994 Guj. 42**.

7. However, after going through both the judgments, it is evident that the same are not applicable to the present case, particularly considering the point raised by the petitioner.

8. In the above referred facts and circumstances, I have perused the relevant provisions i.e. Section 268 of the Indian Succession Act, 1925 and Section 141 of the Code of Civil Procedure, 1908.

9. After going through both the provisions, I have no hesitation to hold that there is no substance in the submission of the petitioner.

10. At this stage, the petitioner-in-person points out that during pendency of the present application, an application for clubbing of both the matters also came to be rejected by the trial Court and a separate writ petition is filed raising a challenge to the said order.

11. In that view of the matter, since the issue as regards clubbing of both the matters is raised in the separate petition, there is no reason to go into the said issue in this petition.

12. In view of above, and since the learned trial Court has not committed any error in passing the impugned order, the Writ Petition is **dismissed**. No order as to costs.

JUDGE