

26.02.2025
Crt. No.4
Item No. 1
PA

**FAT 374 of 2023
with
IA NO: CAN 1 of 2023**

**Meghnath Halder
Vs
Sri Samir Halder &Ors.**

Mr. Sandipan Pal
...For the petitioner.

Mr. Arnab Roy
Mr. Satyam Mukherjee.
... For the respondent.

CAN 1 of 2023

The original petitioners/ respondents claimed for grant of probate claiming to be daughter-in-law of the testatrix. The probate was granted in her favour by the Court of District Delegate. The probate was granted as a non-contentious application. Subsequent to grant of probate the present appellant claiming to be grandson of the testatrix has filed the present appeal.

The application has been preferred by the appellant seeking stay of operation of the judgment and order passed by the Ld. District Delegate Alipore, District-South-24-Parganas dated 18.03.2019 in the probate case No. 172 of 2018.

The respondents herein were the petitioners before the Trial Court who had sought for probate in

respect of a Will said to have been executed by Radharani Halder as regards to her properties.

The appellant/petitioner herein has preferred the present appeal stating that in spite of being an heir he was not cited during the proceeding of the said probate case.

The Ld. Counsels representing the appellants and the respondents have been heard as regards to the application seeking stay of operation of the impugned judgment and order.

The appellant petitioner has stated himself to be the son of the second wife of one Sanjit Halder who is the son of the testatrix namely Radharani Halder. It has also been stated that the mother of the appellant/petitioner was married by the said Sanjit Halder during the subsistence of his first marriage of Sanjit Halder with his first wife namely Golapi Halder and the respondents / opposite parties are descendants of the said Sanjit and Golapi Halder.

The appellant/petitioner has stated that the Ld. District Judge invoking the power under Section 265 of the Indian Succession Act (hereinafter to be referred to as the said "Act") delegated the probate matter to the District Delegate who in turn has been pleased to grant probate. It is the contention of the appellant that by invoking Section 265 of the said Act, the Ld. District Judge has delegated his power upon the Ld. District

Delegate. He has further stressed upon Section 300 of the Indian Succession Act and has submitted that the Hon'ble High Court has concurrent jurisdiction with the Ld. District Judge in exercise of all the powers conferred upon the District Judge. It has also been contended that the Ld. District Judge once after delegating the power cannot once again decide the issue of revocation. Section 299 of the said Act has also been relied upon to contend that since the order has been passed by a District Delegate on being delegated the power by the Ld. District Judge, in a sense it is an order of a Ld. District Judge against which an appeal could not lie before the District Judge and lies to the High Court only as per the provisions of Code of Civil Procedure. In support of his contention the appellant has placed a judgment of a coordinate bench of this Court published in the case of ***Hirak Roy vs. S.k.Roy and Others*** reported in ***1990 SCC Online Cal 494***.

The Ld. Counsel for the respondents has submitted that the appellant is not a necessary party and as such the appellant was rightly not cited during the probate case proceeding before the District Delegate. It is also the contention of the Ld. Counsel that the appellant had the knowledge of the probate proceeding and had ample opportunity to contest the probate as there was a paper publication and in spite of having knowledge, the appellant did not care to contest

the probate proceeding. Ld. Counsel has relied upon Section 263 of the said Act and has submitted that where there is specific provision for revocation or annulment for just cause the said provision is to be relied upon. The judgments relied upon are

1. AIR 2002 CAL 140,
2. AIR 2021 (NOC) 24 (Kar)
3. AIR 1964 PAT 567
4. AIR 1958 CAL 377

This Court first of all deals with the issue that the present appeal is arising out of a probate proceeding and the said proceeding is guided by the provisions laid down under the Indian Succession Act, 1925.

We find that an appeal is provided for under Section 299 of the Indian Succession Act. The same Act contains provision regarding revocation or annulment of a probate but for just cause. Such provision is contained in Section 263 of the Act which reads as follows:

“263. Revocation or annulment for just cause.—The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

- (i) The Court by which the grant was made had no jurisdiction.
- (ii) The grant was made without citing parties who ought to have been cited.
- (iii) The will of which probate was obtained was forged or revoked.
- (iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
- (v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
- (vi) Since probate was granted, a later will has been discovered.
- (vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.
- (viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER IV.—Of the Practice in granting and revoking Probates and Letters of Administration”

In addition to the aforementioned Section the said

Act also lays down under Section 264 the following:

264. Jurisdiction of District Judge in granting and revoking probates, etc.—(1) The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

(2) Except in cases to which section 57 applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombaishall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.

One of the just causes for revocation contained in the provision is a circumstance where the probate or letter of administration was granted without citing parties who ought to have been cited. In the present case the appellant finds fault with the grant of letter of probate by alleging non-citation to be a ground for setting aside the probate. Since the probate is sought to be assailed on the ground of non-citation, it is apparent from a plain reading of the statutory provision under Section 263 that the appellant was required to invoke the provision contained in the said Act for revocation of probate.

From the plain reading of the aforesaid sections it transpires that the District Judge has the jurisdiction to revoke in all cases within his District a probate granted. It also states that probate granted may be revoked or annulled where the proceedings to obtain the grant were defective in substance and in this *lis* grant has been made without citing parties who claim that they ought to have been cited. In this case the appellant namely Meghnath Halder is claiming to be a grand-son of the testatrix namely Radharani Halder.

To prevent anomalies and to prevent defect in the procedure this provision has been incorporated in the statute. It is trite law that where there is specific provision laid down in the statute the said provision is to be applied first rather than general provisions so where

there is specific provision laid down in the statute for revocation of the grant of probate in case of non-adoption of proper procedure, in this present case being non-citation of parties, this Court is of the view that the provision laid down under Section 263 of the Indian Succession Act, 1925 that is prayer for revocation of the grant of probate is to be sought first rather than preferring an appeal under Section 299 of the said Act, as because the alleged procedural lacunae is required to be considered first. Where there is specific provision for eradicating the defective procedure in a legal proceeding that is to be applied first, herein prayer for revocation is to be sought for first and not an appeal which can be preferred if the occasion arises.

In this context the four judgments relied upon by the respondents herein are considered by us to be covering the issue arising for consideration in the present case. In fact, a Division Bench of this Court in the case of ***Mrs. Sara MoizKhyrullah and Others vs. Sri Dilip Kumar Singh and Others*** reported in **2015 SCC Online CAL 6553** is also relevant for the present case as the conclusion of the Division Bench in that case is also on the same lines, that when a probate is assailed on the ground of non-citation then a case is made out for invoking the provisions contained in Section 263 read with Section 264 of the Indian Succession Act and seeking revocation of such probate before the District

Judge. The relevant extract of the judgment reads as follows:

“22. *Considering the scheme of the Act, particularly with reference to the aforesaid provisions thereof, we have no hesitation to hold that an application for revocation of grant of probate under Section 263 of the said Act, be it granted by the District Judge in contentious cases or is granted by the District delegate in non-contentious cases, can only be entertained by the District Judge in view of the provision contained in Section 264 of the said Act which gives unfettered authority upon the District Judge not only to grant probate but also to revoke such grant in all cases within his District.*

23. *Exercise of such jurisdiction by the District Judge is not restricted to the cases where the District Judge granted such probate within the district. Use of the expression “in all cases” in Section 264 of the said Act is very much significant for the present purpose as it clearly indicates that exhaustive jurisdiction has been conferred upon the District Judges to revoke grant of such probate; be it granted by the District Judge in contentious cases or is granted by the District Delegate in non-contentious cases.*

24. *If we read the provision contained in Section 264 of the said Act along with the provision contained in Section 265 of the said Act, the position will be much more clear as Section 265 of the said Act gives a restrictive jurisdiction to the District Delegates only to grant probate and that too in non-contentious cases and jurisdiction to revoke such grant was not conferred upon the District Delegates.*

25. *Thus, we have no hesitation to hold that the District Delegate has no jurisdiction to revoke the grant of probate. Such jurisdiction has been conferred upon the District Judge only and as such, the District Judge cannot avoid consideration of the appellants' application under Section 263 of the said Act on its merit.*

26. *We, however, clarify here that we are not holding that the ex parte grant of probate in non-contentious case by the District Delegate cannot be set aside under the provision contained in Order 9 Rule 13 of the Code of Civil Procedure. Since such a remedy is available to an aggrieved party, he may apply for the same before the District Delegate, but then again if such a proceeding under Order 9 Rule 13 of the Code*

of Civil Procedure becomes contentious, such proceeding again cannot be considered by the District Delegate as the District Delegate has not been conferred with any jurisdiction to deal with any contentious case in connection with the probate proceeding.”

The judgment relied upon by the appellant in the case of ***Hirak Roy vs. S.k.Roy and Others*** reported in **1990 SCC Online Cal 494** is not applicable to the facts and circumstances of the present case. The learned Counsel has tried to convince us that paragraph 8 of the judgment makes it clear that an appeal lies only before this Court in the case of grant of probate. Such submission is indubitable as it is apparent from a plain reading of Section 299 that this Court has an appellate jurisdiction. However, the issue, arising in the present case is not whether the High Court has the appellate jurisdiction or not. The issue that is arising is whether an allegation of non-citation to assail the grant of probate is to be raised by seeking revocation under Section 263 before the District Judge as per Section 264 of the Succession Act, or in such circumstance appeal is to be preferred.

In view of our conclusion above relying upon the Division Bench Judgment of this Court in the case of ***Mrs. Sara Moiz Khyrullah and Others vs. Sri Dilip Kumar Singh and Others*** reported in **2015 SCC Online Cal 6553** it is apparent that in a case of alleged non-citation of necessary party the remedy lies by invoking the jurisdiction for revocation of probate under Section 263. We, therefore, have no hesitation in concluding that decision relied upon by the appellant in ***Hirak Roy vs. S.k.Roy***

and Others reported in ***1990 SCC Online Cal 494*** has no application to the facts and circumstances of the present case. In the present case we, therefore, dispose of the appeal with liberty to the appellant to invoke the provisions contained in Section 263 of the Indian Succession Act for revocation before the District Judge as per Section 264 of the Succession Act and in view of the legal position in this regard emanating from the four decisions relied upon by the learned Counsel for the respondent, as well as decision of the Division Bench in the case of ***Mrs. Sara Moiz Khyrullah and Others vs. Sri Dilip Kumar Singh and Others*** reported in ***2015 SCC Online CAL 6553***.

In the light of the order passed on the application being CAN 1 of 2023 nothing remains in the appeal. The present appeal is thus also disposed of.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)