

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/234/2025
WITH
PLA/242/1997
IA NO: GA/1/2025

IN THE GOODS OF:
SATISH CHANDRA TARAFDER, DECEASED
-AND-
DILIP KUMAR TARAFDER AND ORS.
VERSUS
SUROJIT DAS

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE OM NARAYAN RAI
Date : 10th September, 2025.

Appearance:

Mr. Mainak Bose, Sr. Adv.
Mr. Rishabh Karnani, Adv.
Mr. Anurag Bagaria, Adv.
...for the appellant

Ms. Arunima Lala, Adv.
Mr. Gopal Pahari, Adv.
...for the respondent

Dictated by Arijit Banerjee, J.

The Court: This appeal is directed against an order dated June 17, 2025, whereby a Learned Judge of this Court stayed “the operation of grant of probate of the alleged Will dated 20th March, 1978 or 19th September, 1978 or 4th January, 1979 for a period of five weeks from date”.

The present appellants are the three sons of the testator. The appellant No.1 was named as the executor in the Will of the testator. It

appears that probate was granted in respect of the Will by this Court by an order dated December 21, 1998, in PLA/242/1997.

In the aforesaid factual scenario, the present respondent, Surojit Das, who appears to be a grandson of the testator, through one of his daughters, filed two applications before the Learned Single Judge being GA/1/2025 and GA/2/2025, sometime in May, 2025. GA/1/2025 is an application for revocation of the grant of probate. GA/2/2025 is an application under Section 379 of Bharatiya Nagarik Suraksha Sanhita (corresponding to Section 340 of the Code of Criminal Procedure).

The matters were taken up for hearing on June 17, 2025, when the impugned order was passed *ex parte*.

Being aggrieved, the three sons of the testator have come up by way of this appeal.

We have heard learned Counsel for the parties.

We are unable to sustain the order under appeal. The applicant before the Learned Single Judge approached the Court almost 27 years after probate was granted by this Court in respect of the testator's Will. No reason has been recorded in the order impugned as to why an urgent *ex parte* order was required to be passed. In fact, there is no reason at all in the order as to why an *ex parte* ad-interim order is warranted after 27 years of the Will having been admitted to probate.

There are decisions galore of the Hon'ble Supreme Court which have repeatedly said that when an *ex parte* order is passed, reasons should be recorded in support thereof. If one needs to refer to some of such decisions, one may look up the decisions in *Shiv Kumar Chadha Etc. Etc. vs.*

Municipal Corporation of Delhi and Ors reported in 1993 SCC (3) 161 and *Morgan Stanley Mutual Fund vs. Kartick Das* reported in 1994 SCC (4) 225.

In view of the aforesaid, the order under appeal is set aside.

The Learned Single Judge is requested to decide the two applications filed by the present respondent in accordance with law, uninfluenced by any observation made in this order.

The appeal and the connected application are disposed of.

The respondents in the applications pending before the Learned Single Judge will be at liberty to file their affidavits-in-opposition within a week from date. Reply thereto, if any, be filed within a week thereafter.

The matter will be listed before the Learned Single Judge after exchange of affidavits, as aforesaid.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)