

OD-11

APOT/245/2025
IA NO: GA/1/2025

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IN THE GOODS OF:

DR. BASUDEV BANERJEE (DEC.)
-AND-
SHILADITYA CHATTERJEE
VS
NILOTPAL GANGULI

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE

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

Appearance:

Mr. K. Gooptu, Sr. Adv.
Mr. Kanakendu Chatterjee, Adv.
Mr. Altamash Amen, Adv.
Mr. Sudipta Mandal, Adv.
Mr. Partha Pratim Mukhopadhyay, Adv.
...for the appellant

Mr. Sarosij Dasgupta, Adv.
Mr. Lutful Haque, Adv.
Mr. Golam Karim Chowdhury, Adv.
Ms. Taharima Khatun, Adv.
...for the respondent

Dictated by Om Narayan Rai, J.

The Court :

1. This appeal is directed against an order dated August 4, 2025 passed by an Hon'ble Single Judge of this Court whereby an application being GA/2/2025 filed by the respondent thereby seeking permission to file

caveat and issuance of citation upon him in a proceeding for grant of probate of a will being TS/25/2023 has been allowed.

2. From the material the material on record, the following facts are evident:

- a. One Dr. Basudev Banerjee (since deceased) is said to have left behind three Wills. The first of the said three wills is alleged to have been executed on September 11, 2016, the second thereof on April 17, 2018 and the third one on March 10, 2021.
- b. In respect of each of the said three wills there is an application seeking grant of probate. There are thus three applications seeking grant of probate. All the three applications have been declared to be contentious causes.
- c. The first application in point of time out of the total three as aforesaid is one in respect of the will which appears to have been executed last i.e. PLA/401/2021 (which has been renumbered as T.S. 4 of 2024 upon becoming contentious) has been filed seeking grant of probate in respect of the Will dated March 10, 2021.
- d. PLA/356/2022 (renumbered as T. S. 25 of 2023 upon becoming contentious) is the next in line. The same has been filed seeking grant of probate in respect of the Will executed on April 17, 2018
- e. PLA/4/2022 (renumbered as T. S. 25 of 2023 upon becoming contentious) has been filed seeking grant of probate of the Will dated September 11, 2016.

f. All these three proceedings aforesaid, (i.e. TS/24/2023; TS/25/2023 and TS/4/2024) are being heard analogously.

g. During the continuance of these proceedings, at a time, when issues were to be framed, the respondent before us took out an application being GA/2/2025 in TS/25/2023 seeking *inter alia* the following reliefs:

- “a) Leave be granted to the applicant to move this application;*
- b) leave be granted to the applicant to file the instant affidavit in support of Master’s Summons with the short cause title of the present proceedings;*
- c) Let Special Citation be issued to the applicant, namely, Mr. Bijay Jha, son of Late Chandrasekhar Jha, aged about 45 years, by faith Hindu, by occupation priest, residing at Ward No.20, Mathaband, near Baidyanath Sangitalaya, Deoghar, Jharkhand, Pin- 814 112 and at present camping at “Prashanti”, LIC Building, 1/1, Lake Avenue, Kolkata-700 026, by speed post, with acknowledgement Due, returnable within three weeks from date of service and affixation.*
- d) An order be passed directing Shiladitrya Chatterjee, the executor to disclose all pleadings and connected documents in respect of P.L.A. No.356 of 2022 [which is subsequently renumbered as T.S. No.24 of 2023] to the applicant or his Advocate-on-Record immediately;*
- e) Leave be granted to the applicant to lodge caveat with the concerned department in relation to P.L.A. No.356 of 2022, and to file the affidavit in support of caveat, within a specified time period, as this Hon’ble Court may deem fit and proper;”*

- h. The said application has been allowed by the order impugned. Hence, the present appeal.
3. Mr. Gooptu, learned Senior Advocate appearing for the appellant, has criticized the order impugned by asserting that the order would set a bad precedent inasmuch as the same gives an impression that any person alike the respondent can walk into Court at his leisure and seek to participate in a proceeding throwing all the Rules on the Original Side to the winds. He relies on a Single Bench judgment of this Court in the case of ***In the Good of Priyyanvada Devi Birla (Since Deceased) R. S. Lodha vs. Laxmi Devi Newar***, reported in 2010 SCC OnLine Cal 297: (2010) 3 CHN 686 to buttress his contention. Relying on the said judgment, it is submitted that the Court had in a similar situation refused to allow a party to join the proceedings and contest the same.
4. Learned advocate appearing for the respondent submits that the respondent has caveatable interest in the estate of the testator and that he was prevented by sufficient cause from approaching the Court within the time stipulated in the Original Rules which fact will be evident from the application made by him. It is further submitted the application for probate of the Will alleged to have been executed on April 17, 2018 (i.e. TS 25 of 2023) has been filed subsequent to the application for probate filed by the respondent.

5. We have heard learned counsel appearing for the respective parties and considered the materials on record.
6. It is not in dispute that the application filed by the respondent seeking probate of the Will said to have been executed on March 10, 2021, is prior in point of time to that of the appellant before us.
7. We have gone through the pleadings made in the application filed by the respondent thereby seeking leave to join the probate proceedings by lodging his caveat and claiming issuance of citation upon him. Although the delay in approaching the Court has not been explained by the Respondent with requisite clarity in the said application yet a meaningful reading thereof does not give an impression that the respondent (who has his abode outside the State of West Bengal) has exhibited unpardonable indolence.
8. We may also put on record that in course of arguments, upon a query of Court, it was submitted on behalf of the respondent that the respondent is also a beneficiary in the Will dated March 10, 2021 probate whereof has been sought by him. In such view of the matter, it cannot be denied that the respondent has a caveatable interest in the Will.
9. We have noted that the Hon'ble Single Judge has while passing the order impugned adverted to the fact that the claim of the two other probate – applicants (propounders of the wills said to have been left behind by Dr. Basudev Banerjee (since deceased) would adversely affect the respondent

and for such purpose has referred to two judgments of the Hon'ble Supreme Court i.e ***Saroj Agarwalla vs. Yasheel Jain***, reported in (2017) 14 SCC 285 and ***Krishna Kumar Birla vs. Rajendra Singh Lodha***, reported in (2008) 4 SCC 300. The said two cases clarified that if the answer to the question - as to whether the claim of grant of probate would prejudice the respondent's right because it defeats some other line of succession in terms whereof the respondent as a caveator asserted his/her right or not - is in the affirmative, then in such case the respondent would be said to have caveatable interest in the probate proceeding. The ratio of the said judgments squarely apply to the case at hand. We, therefore, do not find any reason to deviate from the decision ultimately taken by the Hon'ble Single Judge.

10. Insofar as the argument of the appellant that the Rules of this Court do not permit belated approach, we are not impressed by the same. The Court always has power to enlarge or extend or vary the time prescribed by the Rules. In this regard we may profitably refer to Rule 45 of Chapter XXXVA and Rule 46 of Chapter XXXVIII of the Original Side Rules. The same read thus:

"Rule 45 of Chapter XXXVA

45. Varying of times fixed. Cf. Eng. r. 82(A).- *The time fixed by these Rules for the performance of any act may be varied by Order of a Judge or the Registrar subject to such qualifications and restriction and on such terms as he may think fit."*

Rule 46 of Chapter XXXVIII

46. Power to enlarge or abridge time. – *The Court or a Judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered, although the application for the same is not made until after the expiration of the time appointed or allowed.”*

11. As regards the judgment in the case of **Priyyanvada Devi Birla** (supra) cited by the appellant, it appears from the facts of the said case that the person who sought to be added to the proceedings was a fence sitter. There was no attempt on the part of the petitioner therein to justify his delayed approach to Court. In the case at hand, as we have already discussed hereinabove, we are satisfied that there is a plausible reason for the respondent's delayed application.
12. By the order impugned the Hon'ble Single Judge has allowed the respondent to participate in in the probate proceeding upon finding that the respondent has caveatable interest. Such an order appears to be justified. We are sitting in appeal over such order and we must be cautious that as an appellate Court we interfere only when the order appealed against is clearly wrong and not when the same is not right.

13. For all the reasons aforesaid, we dismiss the appeal being APOT/245/2025 along with the connected application. There will be no order as to costs.

14. It is recorded that after dictation of the order, it was submitted by the respondent that the respondent had already lodged his caveat even before filing of the present appeal.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)

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