



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

APPELLATE JURISDICTION CIVIL SIDE

WRIT PETITION NO.1937 OF 2024

Smt. Asha w/o. Vinay Malhotra,
Age 76 years, Occu. Housewife,
R/o. House No.80-C, Sector-I,
Parwanoo, District Salon,
Himachal Pradesh

.. Petitioner

Versus

Shri. Satish s/o. Girdharilal Vohra,
Age 81 years, Occu. Retired,
R/o. "Krishna", State Bank Colony,
Near Green Park, Raj Nagar,
Katol Road, Nagpur-13

.. Respondent

Mr. S. S. Sitani, Advocate for Petitioner;
Mr. Arjun Raoka, Advocate for Respondent

CORAM : SACHIN S. DESHMUKH, J.

DATE : 12-08-2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.
2. The petitioner is aggrieved by the orders, dated 02.08.2021 and 21.12.2023, rendered by the learned Joint Civil Judge, Senior Division, Nagpur, by which the application for dismissal of the probate proceeding under Section 213 of the Indian Succession Act, 1925 (for short, "the Act") was presented in Probate Case No.16 of 2019.

3. The respondent has presented the probate proceeding on the basis of will deed dated 30.09.2014, wherein the petitioner presented an application for dismissal of the probate proceeding. The trial Court rejected the application. Stipulation was incorporated in order to the payment of necessary court fees and other formalities to be completed for institution of the suit were directed by its order dated 02.02.2021.

4. In view of the aforesaid order, the Assistant Superintendent of the Civil Court, Senior Division, Nagpur, submitted a report of non compliance after conversion of probate proceeding. The trial Court in view of the provisions of Section 295 of the Act, while reconsidering the order holding that the court fees is not required to be deposited at the time of presentation of application for probate and the same will have to be paid only after grant of probate. Resultantly, clause (2) of the operative order dated 02.02.2021, below Exhibit-8, was recalled and the office objection regarding non payment of court fees and compliance of other formalities by the petitioner was repealed. Thereafter, matter was posted for filing of written statement of the petitioner herein.

5. The petitioner, in order to seek the review of same, presented an application. The original applicant/respondent opposed the same. The trial Court, after considering the statutory provision, rejected the application presented by the petitioner. Thus, the petitioner has approached this Court, by filing the

present petition under Article 227 of the Constitution of India.

6. The learned counsel for the petitioner has submitted that the trial Court has committed error while not appreciating the provisions of Section 57 of the Act, probate proceeding are not maintainable in the city of Nagpur and same cannot be entertained until it is converted into a civil suit. It is further submitted that the trial Court has acted contrary to the law laid down by this Court and there was no occasion for the trial Court to review its own order in absence of any error apparent on the face of record, as such, prayed to allow the petition.

7. Per contra, the learned counsel for the respondent supported the order by submitting that the provisions of Section 29 read with Clause 10 of Schedule-I of the Bombay Court Fees Act, 1959 (for short, "Act of 1959") are considered in proper perspective by the trial Court. Clause 10 of Schedule-I lays down quantum of court fees payable on probate of will or letters of administration. However, it does not require payment of court fees on application for probate, but same mandates payment of court fees only on issuance of probate. As such, the order rendered by the trial Court is in accordance with the statutory provisions. As such, prayed for dismissal of the petition.

8. I have heard the learned counsel for the parties at length. Perused the documents on record.

9. Before advertizing to the arguments advanced by the learned counsel for the litigating sides, it would be necessary to refer to the relevant provisions.

“29. Payment of court-fee in respect of probate and letters of administration-

(1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third Schedule, and the Court is satisfied that the fee mentioned in No. 10 of the first Schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any report made by the Collector under section 28, sub-section (3).

Clause 10 Schedule I of the Bombay Court Fees Act, 1959.

10. Probate of a Will or letters of administration with or without Will annexed	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the amount or value up to fifty thousand rupees.	Two per cent
	When the amount or value of the property in respect of letters is made exceeds fifty thousand rupees, upto two lakh rupees.	Four per cent
	When the amount or value of the property in respect of probate or letters is made exceeds two lakh rupees, on the part of the amount or value in excess of two lakh rupees, upto three lakh rupees.	Six per cent
	When the amount or value of the property in respect of which the grant or probate or letters is made exceeds three lakh rupees, on the part of the amount or value in excess of three lakh rupees;	Seven and half per cent subject to the maximum of 75,000/- rupees
	Provided that when, after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regular VIII of 1827 or any corresponding law for the time being in force, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

10. The Act of 1959 deals with the levy of court fees in respect of the proceedings which are presented in the Court, is governed by the provisions of the said statute. Section 29 and Clause 10 of Schedule I, necessarily has to be read harmoniously. Sub-Section (1) of Section 29 of the Act of 1959, is couched in a negative phraseology which means and implies the same as mandatory. It lays down that no order entitling the petitioner to grant of probate or letters of administration shall be made upon an application for such grant until the petition is filed in the Court a valuation of the property in the form set forth in the third Schedule and the Court is satisfied that the fees mentioned in Clause 10 of the first Schedule has been paid on such valuation. So also, clause 10 of Schedule-I lays down the quantum of court fees. Thus, the court fees is payable on probate of will or letters of administration with or without will annexed. Clause 10 of Schedule I does not require payment of court fees on “application” for probate. However, it requires the payment of court fees on “probate”. Section 29 of the Act also mandates the payment of court fees only when the court will pass an order entitling the petitioner to grant of probate. It nowhere mandates that the court fees is required to be paid on an “application” for grant of probate. There may be eventuality if the Court in a contentious manner renders the conclusion that order for grant of probate is not to be passed, in such eventuality, no court fees is required to be paid nor is payable.

11. Having re-considered the issue in accordance with the statutory provisions and the law declared by this Court in the case of ***Shashikant s/o. Gangadhar Thorat and another vs. Punja s/o. Gangadhar Thorat and others, 2011(5) Mh.L.J. 245***, and followed by this Court in the case of ***Niranjanbhai Shantilal Doshi and another versus Asharmshtaben Narendra Shah and others, Writ Petition No.101 of 2019, dated 06.11.2019***, no error could be noted in the order rendered by the trial Court.

12. Thus, considering the aforesaid position of law, in my considered view, owing to the contest by the petitioner to the probate proceeding, same become contentious, therefore, it is to be proceeded in the form of a suit, but that by itself does not transform the proceeding into a suit under the Code of Civil Procedure, 1908. Thus, the nature of the probate proceeding does not get transformed and altered to the suit on account of the contest. Therefore, the trial Court is justified in applying the provisions of Sub-Section (1) of Section 29 read with Clause 10 of Schedule I does not require payment of court fees on application of probate, but requires the court fees on issuance of probate only. Thus, no error is committed by the trial Court while rejecting the application.

13. The trial Court was justified in dismissing the application presented by the petitioner for dismissal of the probate proceeding as well as recalling the stipulation (2) contained in the order dated 02.02.2021 in relation to compliance of payment of court fees upon conversion of the civil suit.

14. For the aforesaid reasons, the orders under challenge do not warrant any interference.

15. Resultantly, the writ petition stands dismissed.

16. Rule is discharged.

17. No order as to costs.

[SACHIN S. DESHMUKH]
JUDGE

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