

N.22S1
151/CL

CO 4050 of 2025

Satya Raj Das
v.
Asis Kumar Das

15.06.26
DL-09
Ct-06
(S.R.)

Mr. Surojit Nath Mitra, Sr. Adv.
Ms. Sananda Mukhopadhyay
Ms. Susmita Pal ... for the petitioner.

Mr. S.P. Mukherjee, Sr. Adv.
Mr. Sounak Bhattacharya
... for the opposite party.

1. This revisional application is directed against an order dated August 8, 2025 passed by the learned Chief Judge, City Civil Court, Calcutta whereby an application for grant of probate filed by the opposite party has been directed to be registered as a contentious cause.
2. The opposite party has filed Probate Case No.45 of 2023 before the learned Chief Judge, City Civil Court, Calcutta praying for grant of probate in respect of a Will said to have been executed by one Shefali Bhattacharjee, since deceased.
3. In the said case, the petitioner entered appearance by filing Vakalatnama and took out an application praying for dismissal of the Probate Case (with an alternative prayer for stay of all further proceedings of the said Probate Case) *inter alia*, on the ground that the opposite party (i.e. the applicant in the probate case) has suppressed the fact that this

Court has by an order dated April 27, 2022 already granted letters of administration to the petitioner in respect of the last will and testament dated July 9, 2020 executed by the same Shefali Bhattacharjee, since deceased.

4. Upon such application being filed, the learned Chief Judge, City Civil Court, Calcutta has observed that the probate application has become a contentious cause and has directed the same to be “*registered/ converted/ treated as OC*” and be transferred to the learned Judge, Bench – IV, City Civil Court, Calcutta for hearing and disposal.
5. Mr. Mitra, learned senior advocate appearing for the petitioner submits that the learned Chief Judge, City Civil Court has committed a serious error in observing that the case has become contentious inasmuch as, no written statement has yet been filed by the petitioner.
6. It is further submitted by Mr. Mitra that the said application is one in the nature of a demurrer challenging the maintainability of the probate case, *inter alia*, on the ground of suppression and a full-fledged defence by the petitioner would be taken only if the probate case withstands the challenge to its maintainability.
7. Mr. Mukherjee, learned senior advocate appearing for the opposite party submits that there is nothing wrong in the learned Courts’ treating the case to be

a contentious one in view of the petitioner having opposed the maintainability of the probate proceeding. It is further submitted that the petitioner's demurrer application has been fixed for hearing on June 30, 2026 before the learned Judge, Bench – IV, City Civil Court, Calcutta.

8. Heard learned advocates appearing for the respective parties and considered the material on record.
9. Going by the definition of the expression "Contention" as provided in Section 286 of the Indian Succession Act, 1925, a case for grant of probate or letters of administration would become contentious upon *"the appearance of anyone in persons or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding."*
10. In the instant case, the petitioner has appeared by filing a Vakalatnama and expressed his intention to oppose the grant initially by taking out an application for demurrer.
11. In such view of the matter, this Court does not find any illegality or material irregularity in the learned Chief Judge, City Civil Court observing that the probate case has become a contentious cause.
12. In such view of the matter there is nothing that prevents the learned Transferee Court i.e. learned Judge, Bench – IV, City Civil Court, Calcutta before

whom the case is pending as a contentious cause to take up the petitioner's demurrer application and decide the same, in accordance with law.

13. It is clarified that filing of the maintainability petition would not preclude the petitioner from taking a full-fledged defence in the form of a written statement, in accordance with law. Needless to mention that if written statement is filed by the petitioner, the same would be without prejudice to the petitioner's right and contention as regards the maintainability of the probate case.
14. It is further clarified that this Court has not gone into the merits of the application challenging the maintainability of the probate case, which is to be decided by the learned Judge, Bench-IV, City Civil Court, Calcutta on its own merits, in accordance with law.
15. All points shall be left open to be urged by the parties and to be decided by the said learned Court, strictly, in accordance with law.
16. With the aforesaid observations, CO 4050 of 2025 stands disposed of. No costs.
17. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)