

AD-25
Ct No.16
19.05.2026
TN

FAT 43 of 2023
IA No: CAN 1 of 2022
CAN 2 of 2022

Smt. Sarmistha Ghose
Vs.
Smt. Bandana Ghosh

Mr. Supratim Laha,
Mr. Bikash Shaw,
Sk. Saad Islam

..... for the appellant

1. At the outset, a question arises as to maintainability of the present appeal which, being a threshold issue hitting at the very root of the appeal, is being taken up for adjudication first.
2. The present appeal has been preferred against an order whereby the concerned District Delegate returned the probate application filed by the appellant on the ground that it has been rendered contentious, to be filed before the “proper forum”.
3. Learned counsel for the appellant submits, by placing reliance on the so-called objection raised by the respondent, that the same is not worth being called an objection at all, merely being a one-page petition signifying that the respondent is objecting to the Will, without any disclosure as to the premise of such objection and/or that the respondent even has any caveatable interest.
4. Section 264 of the Indian Succession Act, 1925 empowers the District Judge to grant and revoke probates and letters of administration in all cases

within his District, with an exception being carved out in Section 265, which empowers the High Court to appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in “non-contentious cases”.

5. Section 286 of the said Act stipulates when the District Delegate shall not grant probate or letters of administration, which is specified to be any case in which there is “contention” as to the grant, or in which it otherwise appears to the District Delegate that probate or letters of administration ought not to be granted by the District Delegate.
6. The Explanation to Section 286 defines “Contention” to mean *the appearance of any one in person, or by his recognized agent, or by pleader duly appointed to act on his behalf, to oppose the proceeding.*
7. Thus, the term “contention” has been read in the 1925 Act merely to be an act of opposing the probate proceeding, without specifying any further requirement for a disclosure as to the caveatable right of the objector and/or the grounds of such objection.
8. Once an objection is taken, there is no option before the District Delegate under Section 286 but to refer the same to the District Judge under Section 288 of the said Act.
9. Of course, it is always open to the propounder to satisfy the District Court as to there being no merit in the objection and/or that the objector does not have

any caveatable interest. However, all those questions are to be decided not by the District Delegate, within the paradigm of the 1925 Act, but by the concerned District Judge.

10. Thus, by the impugned order, it is obvious that the probate application was returned, upon turning contentious by dint of the objection raised by the respondent, to be presented before the learned District Judge of South 24 Parganas.
11. Moreover, we do not find any rights of the parties being decided by the impugned order to render it appealable.
12. Section 299 of the 1925 Act provides for an appeal against an order of the District Judge passed in a probate/letters of administration proceeding. However, such appeal has to be maintainable otherwise.
13. The return of the probate application in the instant case, upon an objection being raised, was the only course of action open to the District Delegate under the relevant provisions of the 1925 Act, which is of a quasi-administrative nature without involving any adjudication as such.
14. Accordingly, there is no scope of entertaining the appeal.
15. Hence, FAT 43 of 2023 is dismissed as not maintainable.
16. Consequentially, CAN 1 of 2022 and CAN 2 of 2022 become redundant and are disposed of.

17. There will be no order as to costs.
18. It is made clear that nothing in the above observations will preclude the appellant from presenting the probate application in the form of a plaint before the concerned District Court in terms of the order impugned before us and/or to argue the rights of the respondent to raise objection to the grant of probate, on the ground of caveatable interest, merits of the objection and/or any other ground.
19. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)