

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION

Present :- Hon'ble Justice Amrita Sinha
Hon'ble Justice Ajay Kumar Gupta

FAT 15 of 2026
With
CAN 1 of 2026
CAN 2 of 2026

Sri Sanjay Kumar Agarwal & Anr.
Vs.
Ghanshyam Agarwal & Anr.

For the appellants :- Mr. Amit Sinha, Adv.
 Mr. Bikash Singha, Adv.

For the respondents :- Mr. Samar Rakshit, Adv.
 Mr. Deborshi Dhar, Adv.
 Ms. Tanya Bhowmik, Adv.

Heard on :- 30.06.2026

Judgment on :- 30.06.2026

Uploaded on :- 01.07.2026

Amrita Sinha, J. & Ajay Kumar Gupta J. :-

1. Affidavit-of-service, filed in Court today, is taken on record.

Re: **CAN 1 of 2026**

2. This is an application seeking condonation of delay of 1434 days in filing the appeal.

3. Upon consideration of the submissions of the learned advocates for the respective parties and on perusal of the averments made in the application, we are satisfied with the cause shown by the appellants for not filing the appeal in time.
4. The delay is condoned.
5. The application being **CAN 1 of 2026** is **allowed**.

Re: **FAT 15 of 2026**

1. This is an appeal challenging the order dated 16th December, 2021 passed by the learned District Judge at Coochbehar in connection with Misc. Judicial Case No. 15 of 2020 filed in connection with Misc. Probate Case No. 25 of 1989.
2. By the order impugned, the learned District Judge returned the application filed by the appellant for revocation of grant of probate by holding that the proper forum for filing the same would be the District Delegate, i.e, the Additional District Judge who granted the probate.
3. The learned advocate appearing on behalf of the appellants submits that probate was granted by the District Delegate when the application for probate was non-contentious. When application has been filed for revocation of the same, the issue becomes contentious.
4. It has been submitted that the District Delegate does not have the jurisdiction to decide a contentious issue relating to probate proceeding. The issue has to be adjudicated by the District Judge.
5. Learned advocate for the appellant relies upon the decision passed by this Court in the case of ***Mrs. Sara Moiz Khyrullah Vs. Sri Dilip Kumar Singh*** reported in **(2016) 1CalHCN 16 : (2015) 4 ICC 709** in support of his submission that the District Judge is the appropriate forum to decide the issue of revocation of probate.

6. The appellants pray for setting aside the impugned order.
7. The learned advocate for the respondents, in his usual fairness, submits that the District Judge is the appropriate forum to decide the issue.
8. Learned advocate for the respondents relies on the judgment delivered by this Court in the case of **Kailash Chandra Vs. Nanda Kumar** reported in **AIR 1944 Calcutta 385** wherein it was held that the District Delegate cannot hear and decide the application for grant of probate and the petition ought to be returned to the petitioner for presentation of the same before the District Judge.
9. It has, however, been submitted that the matter may be decided by the Court on merits.
10. The issue to be decided in the appeal is whether the District Delegate has the power and jurisdiction to adjudicate an application for revocation of probate granted by it.
11. Section 264(1) of the Succession Act, 1925 clearly lays down that the District Judge shall have jurisdiction to grant and revoke probates and letters of administration in all cases within his district.
12. Section 265 of the Succession Act, 1925 prescribes that the High Court may 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, within such local limits as it may prescribe.
13. The aforesaid two provisions distinctly mention that the District Judge has the jurisdiction to decide both contested and non-contested application for grant of probate but the delegate has been authorized to grant probate only when the prayer for grant of probate is not objected to by any party.
14. The same implies that the moment any party objects to the grant of probate, the proceeding becomes contentious, and the controversy cannot be decided by the

delegate. It is only in non-controversial proceeding, that the delegate has the power to grant probate.

15. In the case at hand, when probate was granted by the District Delegate, the proceeding was not contested by any party. The appellant has averred in the application for revocation that they were not aware of the probate proceeding and, hence, did not have the opportunity to object to the grant of probate.

16. If the appellants had knowledge of the proceeding, then they could have got a chance to object prior to the grant of probate. Had the objection been filed at the initial stage before grant of probate, then the proceeding could not have been decided by the District Delegate as per the mandate of Section 265(1) of the Act.

17. In *Kailash Chandra* (supra) the Hon'ble Division Bench of this Court laid down that the contention – the Court which made the grant is alone competent to revoke it – is not a sound one. The Court opined that application for revocation of probate is contentious from its very inception, and that is the reason why it has not been included in Section 265 of the Act.

18. The Court was also not inclined to accept the proposition that when probate was granted in a non-contentious proceeding, the District Delegate would have the jurisdiction to revoke it. The Court clearly held that if such a view is accepted, the same would lead to anomalous results and the position would be that the District Delegate would be competent in the revocation case to pronounce a will to be spurious which he could not do in the probate proceeding itself.

19. It is settled law that, what cannot be done directly, cannot be done indirectly. Section 286 of the Act bars the District Delegate to grant probate or letters of administration in case where there is contention as to the grant.

20. Section 288 of the Act lays down that in every case where there is contention, the District Delegate shall return to the person who made the application for grant of probate for presentation of the same before the District Judge.

21. In Dilip Kumar Singh (supra) the Court held that Section 265 of the Act gives restrictive jurisdiction upon the District Delegate to grant probate in non-contentious cases and jurisdiction to revoke such grant is not conferred upon the District Delegate.

22. The Court in clear words laid down that the District Delegate does not have the jurisdiction to revoke the grant of probate. Such jurisdiction has been conferred upon the District Judge only. The District Judge cannot avoid consideration of the appellant's application for revocation under Section 263 of the Indian Succession Act, 1925 on its merits.

23. In the instant case, the learned District Judge in its order dated 23rd September, 2020 took note of the judgment delivered in the case of Dilip Kumar Singh (supra) and registered the Misc. Judicial Case. Notice was issued and the Trial Court Records were called for.

24. Unfortunately thereafter, the learned Trial Court appears to have misdirected itself and overlooking the order dated 23rd September, 2024, passed the impugned order dated 16th December, 2021 directing return of the application for grant of probate. Such direction is contrary to law.

25. In view of the discussions made herein above it is held that the District Judge is the competent authority both for grant and revocation of probate, in contentious as well as non-contentious cases; whereas, the District Delegate has the jurisdiction to only grant probate, that too, in non-contentious cases. District Delegate is not at all empowered to revoke the grant of probate.

26. Hence, the impugned order dated 16th December, 2021 passed by the District Judge is held to be erroneous and liable to be set aside. The same is, accordingly, set aside.

27. The District Judge is directed to adjudicate the application made by the appellants for revocation of grant of probate in accordance with law.

28. Considering the fact that the application for revocation was filed in September, 2020 and quite some time has elapsed in the meantime, this Court expects that the application be disposed of as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

29. **FAT No. 15 of 2026** is, thus, **allowed**.

30. In view of the disposal of the appeal, the connected application being **CAN 2 of 2026** stands disposed of.

31. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)

(Ajay Kumar Gupta, J.)