

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE**

APOT/139/2025

WITH

PLA/115/2023

IA NO: GA/1/2025

IN THE GOODS OF:

PRABIR CHANDRA SEN, DECEASED

-AND-

IN THE MATTER OF:

DHRUBA GHOSH... APPELLANT

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE OM NARAYAN RAI

For the appellant	: Mr. Jayanta Kumar Mitra, Sr. Adv. Mr. Soumyajit Ghosh, Adv. Ms. Ajeyaa Choudhury, Adv. Mr. Asoke Basu, Adv. Mr. Dipto Ghosh, Adv.
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For the appellant	: Mr. Sanjiv Kr. Trivedi, Adv. Mr. Sarvapriya Mukherjee, Adv. Ms. Iram Hassan, Adv. Mr. Sanket Sarawgi, Adv. Ms. Yukta Agarwal, Adv.
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Judgment on	: 22.09.2025
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Arijit Banerjee, J.: -

1. This appeal is directed against a judgment and order dated January 16, 2025, passed in PLA 115 of 2023, being an application filed by the executor named in the last will and testament left behind by Prabir Chandra Sen who passed away on May 2, 2020, seeking probate in respect of the said will.

2. The operative portion of the impugned judgement and order reads as follows:-

“21. In the aforesaid facts and circumstances, I hold that provisions of Section 283(3) is mandatory in nature and is required to be complied with in the same manner as indicated in Section 283(3) of the Indian Succession Act, 1925 in case where this Court is exercising concurrent jurisdiction under Section 300 of the 1925 Act.

22. Thus, the petitioner is directed to comply with the requirements of Section 283(3) of the Indian Succession Act, 1925.”

3. Being aggrieved, the applicant for probate has come up with this appeal.

4. Learned Senior Advocate appearing for the appellant submitted that while coming to the conclusion that the provisions of Section 283(3) of the Indian Succession Act, 1925, are mandatory, the learned Single Judge has made various observations about other provisions of law relating to the testamentary jurisdiction of this Court which are erroneous and contrary to the settled principles of law.

5. Learned Counsel pointed out that the following observations were made by the learned Judge in the impugned judgment and order which have created utter confusion in the testamentary department. No application for probate is being accepted or processed by the department. Such observations are as follows: -

“4. *Thus after introduction of 1980 Amendment, this Court except in certain cases where in respect of probate of a Will over which the 1925 Act has no application only exercises the original jurisdiction otherwise it only exercises concurrent jurisdiction vested to it under Section 300 of the 1925 Act and not the jurisdiction originally vested unto in under Clause 34 of Letters Patent, 1865.*

5. *This Court, therefore, while exercising concurrent jurisdiction is clothed with the powers and limitation of that of a District Judge as under the 1925 Act.*

6. *In the light of the aforesaid if one looks into the provisions of Section 273 of the 1925 Act it is also clear that this Court while exercising concurrent jurisdiction after the amendment of 1980 to the City Civil Courts Act, 1953 is exercising jurisdiction not as a “High Court” under proviso (a) thereunder but that available to a District Judge under proviso (b) thereof. Thus the restrictions imposed to the jurisdiction of the District Judge is also applicable in the case where the High Court is exercising concurrent jurisdiction.*

8. *To summarize, since a Judge in the Original Side is not exercising the jurisdiction as a principal Civil Court of original jurisdiction while exercising concurrent jurisdiction under Section 300 of the 1925 Act, the said Judge cannot grant probate or letters of administration having effect over all properties and assets both movable and immovable constituting the estate thought out the other state irrespective of its value unless otherwise directed by the grant. The probate or letters of administration issued while exercising concurrent jurisdiction over an estate, the value of the property and assets affected by such act is beyond the limits of the State, shall not exceed ten thousand rupees (Rs.10,000/-) on the judge certifying the same as under proviso (b) of Section 273 of the 1925 Act. It is true that the value of Rs.10,000/- has become otiose under the present day market value but it is for the legislature to look into this issue and not for Court to decide.*

9. *The provisions of Rule 13 and 14 of Chapter XXXV of the Original Side Rules of this Court will also not permit issuance of probate or letters of administration in respect of properties throughout the State or the Union of any value where this Court is not exercising jurisdiction under Clause 34 of the Letters Patent as also in view of the provisions in the substantive law i.e., 1925 Act as discussed hereinabove.*

This takes us now to the provisions of Section 283 of the 1925 Act which is set out hereunder:

“283. Powers of District Judge. — (1) *In all cases the District judge or District Delegate may, if he thinks proper. —*

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be;

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the court-house, and also the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in

another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.”

10. *The heading of Section 283 is “Powers of District Judge”. A Judge in the Original Side of this Court while exercising jurisdiction under 1925 Act is not exercising jurisdiction as a Principal Court of Original Jurisdiction, but is vested with the powers of the District Judge for such purpose as envisaged under the 1925 Act. The provisions of Section 283 of the 1925 Act is therefor, applicable in these cases where this Court exercises concurrent jurisdiction under Section 300 of the 1925 Act.*

This takes us to the word “citation” which is used in different parts of the 1925 Act but is not defined under the said Act.

Citation as defined in the Concise Law Dictionary by P.G. Osborn (Fifth Edition) is set out hereunder:

“citation. (1) The calling upon a person who is not a party to an action or proceeding to appear before the court. (2) The quotation of decided cases in legal argument as authorities.”

The definition of ‘citation’ quoted in Jowitt’s Dictionary of English Law which reads as follows:

“Citation : In probate actions, citation is employed in order to give notice of the proceedings to persons whose interests are or may be affected by them, so as to give them an opportunity of appearing and taking part in the proceedings if they wish to do so. This is called

citation to see proceedings. The person issuing a citation is called the party citant, and the person to whom it is addressed the citee.”

The definition of ‘citation’ quoted from Black’s Law Dictionary, Tenth Edition which reads as follows:

*“Citation: **1.** A court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so. **2.** A police-issued order to appear before a judge on a given date to defend against a stated charge, such as a traffic violation. – Also termed appearance ticket, **3.** A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position. – Often shortened to (in sense 3) cite.”*

16. *This also takes care of the argument advanced on behalf of the applicant that in a non-contentious cause where the heirs/heirress in intestacy have consented to the grant, there is no need for issuance of citation under Section 283(3) of the 1925 Act. This argument is unsustainable because any person interested in respect of the estate wherein properties are situated in other state will not come to know about the probate proceedings, or the application for letters of administration made in this Court. It will not be possible for such a person to come forward and object to the grant if he/she so desires. This also may lead to a situation where the applicant knowing fully-well that there may be objection in respect of part of the estate which is situated outside the State may without complying with the provisions of Section 283(3) of 1925 Act, surreptitiously obtain the grant. Non-compliance of the provisions of*

Section 283(3) of the 1925 Act may also expand the scope of the litigation or multiplicity of judicial proceedings in furtherance.”

6. Before expressing our opinion, we should take note of certain provisions of law.

7. **The Indian Succession Act, 1925**

(i) Section 2 (bb). “District Judge” means the Judge of a Principal Civil Court of original jurisdiction;

(ii) Section 283. Powers of District Judge.—

(1)In all cases the District judge or District Delegate may, if he thinks proper, —

(a)examine the petitioner in person, upon oath;

(b)require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be;

(c)issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2)The citation shall be fixed up in some conspicuous part of the court-house, and also the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3)Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

(iii) Section 300. Concurrent jurisdiction of High Court.—

(1)The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

*(2)Except in cases to which section 57 applies, no High Court, in exercise of the concurrent jurisdiction hereby conferred over any local area beyond the limits of the towns of Calcutta, Madras and Bombay *** shall, where the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, receive applications for probate or letters of administration until the State Government has, by a notification in the Official Gazette, authorised it so to do.*

8. Letters Patent, 1865

Clause 34 Testamentary and intestate Jurisdiction:- - And we do further ordain that the said High Court of Judicature at Fort William in Bengal shall have the like power and authority as that which may now be lawfully exercised by the said High Court, except within the limits of the jurisdiction for that purpose of any other High Court established by Her Majesty's Letters Patent, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate whether within or without the said Bengal Division, subject to the orders of the Governor-General in Council as to the period when the said High Court shall cease to exercise testamentary and intestate jurisdiction in any place or places beyond the limits of the provinces or places for which it was established: provided always, that nothing in these Letters Patent contained shall interfere with provisions of any law which has been made by competent legislative authority for India by which power is given to any other Court to grant such probates and letters of administration.

9. The Rules of The High Court At Calcutta (Original Side), 1914: Chapter XXV

Rule 9. *Citation to rightful parties. - On an application for letters of administration, unless otherwise ordered, a citation shall issue to all persons having a right to take the grant prior or equal to that of the applicant, unless such persons have signified their consent to the application.*

10. The City Civil Court Act, 1953, as amended by the City Civil Court (Amendment) Act, 1980

5. Jurisdiction. -

(1)The local limits of the jurisdiction of the City Civil Court shall be the City of Calcutta.

(2)Subject to the provisions of sub-sections (3) and (4),[* *] [Words and figure omitted by West Bengal Act 35 of 1969.] the City Civil Court shall have jurisdiction and the High Court shall not have jurisdiction to try suits and proceedings of a civil nature, not exceeding [rupees ten lakhs] [Words first substituted by West Bengal Act 35 of 1969. Thereafter, those words again] in value.*

[Provided that the City Civil Court and the High Court at Calcutta shall have concurrent jurisdiction to try suits and proceedings of a civil nature, the value of which exceeds rupees ten lakhs but does not exceed rupees one crore.] [Inserted by Notification Act No. 18 of 2013, dated 10.10.2013.]

(3)[The City Civil Court shall have jurisdiction and the High "Court shall not have jurisdiction to try any proceeding under-] [Sub-section (3) substituted by West Bengal Act 60 of 1980.]

(i)the Guardians and Wards Act, 1890,

[* * * * *] [Words. figures and brackets omitted by West Bengal Act 19 of 1982.]

(iii) the Indian Lunacy Act, 1912,

(iv) the Indian Succession Act, 1925.

(4) The City Civil Court shall not have jurisdiction to try suits and proceedings of the description specified in the First Schedule.

(5) All suits and proceedings which are not triable by the City Civil Court shall continue to be triable by the High Court or the Small Cause Court or any other Court, tribunal or authority, as the case may be, as heretofore.

21. Act to override other law including Letters Patent. -

The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law, including in particular the Letters Patent of the High Court.

22. Amendments to certain enactments. -

The enactments specified in the Second Schedule are hereby amended in their application to West Bengal to the extent and in the manner mentioned in the fourth column of such Schedule.

Year	Number	Short Title	Amendments
1	2	3	4
1925	39	Indian Succession	(1) To clause (bb) of section 2, the following proviso shall be added: -"Provided that as

		Act, 1925.	respect the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta references to a District Judge in this Act shall be construed as references to the City Civil Court established under the City Civil Court Act, 1953." (2) In section 273, clause (a) of the proviso shall be omitted. (3) In section 274, for sub-section (1), the following sub-section shall be substituted: - "(1) Where probate or letters of administration has or have been granted by a District Judge with the effect referred to in the proviso to section 273, the District Judge shall send a certificate thereof to the High Court to which such District Judge is subordinate and to each of the other High Courts." (4) Section 300 shall be omitted. (5) For Schedule IV, the following Schedule shall be substituted:-
1925 (Contd.)	39 (Contd.)	Indian Succession Act, 1925.	"Schedule IV [See section 274 (2)] Form Of Certificate I., A. B., hereby certify that on the day of granted probate of the will (or letters of

			administration of the estate) of C.D., late of deceased, to E.F. of... and G.H. of and that such probate (or letters) has (or have) effect over all the property of the deceased throughout India.”
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11. I would like to note certain relevant judgments.

12. In ***In the goods of: Sailendra Nath Sarkar, deceased, 1984 (2) CHN 99***, the testator, a resident of Howrah, outside the ordinary original civil jurisdiction of this Court, but within the testamentary jurisdiction of the District Court, Howrah, died leaving properties all within the jurisdiction of the Court of the District Judge, Howrah. The executors of the will applied for probate in this Court. A question arose as to whether or not after amendment of the City Civil Court Act, 1953 by the City Civil Court (Amendment) Act, 1980, this Court had jurisdiction to grant probate of the said will. A broader question arose as to how far the High Court’s jurisdiction to grant probate and letters of administration under the Indian Succession Act, 1925, and under Clause 34 of the Letters Patent, 1865, has been affected in view of the amendment of the City Civil Court Act. After a detailed discussion and analysis of the relevant provisions of law as also decisions of various Courts, a learned Judge of this Court held as follows:-

“... 30. In view of amended S.5 of the City Civil Court Act in case where the deceased dies leaving a fixed place of abode and has left properties within the jurisdiction of the City Civil Court i.e., City of Calcutta, which means the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court, only the City Civil Court has the jurisdiction to grant probate or letters of administration. It is contended by the petitioners that the pecuniary jurisdiction of City Civil

Court in such cases is only upto rupees one lakh and beyond that limit the jurisdiction of the High Court has not been affected. I am unable to accept such contention Section 5(2) of the City Civil Court Act, 1953 as amended, which specifies the pecuniary limit upto rupees one lakh, is subject to sub-section (3) and (4) of S. 5. By amended S. 5(3) exclusive jurisdiction has been given to the City Civil Court to try any proceeding inter alia, under the Indian Succession Act, 1925 arising within the territorial jurisdiction of City Civil Court. With regard to proceeding under various Acts mentioned in sub-section (3) which includes Indian Succession Act the pecuniary jurisdiction of the City Civil Court is not limited because sub-section (2) of S. 5 is subject to the provisions of sub-section (3) and (4) of that section. Hence in my view, High Court's jurisdiction and power to try proceeding in respect of cases under Indian Succession Act arising exclusively within the territorial jurisdiction of the City Civil Court has been completely taken away by the City Civil Court (Amendment) Act, 1980 and conferred on the City Civil Court. The intention of the legislature is clear that such proceeding will be tried by the City Civil Court exclusively.

32. *Excepting the provisions of the Indian Succession Act which are omitted by the City Civil Court (Amendment) Act, 1980 if any power or jurisdiction which has been conferred upon the High Court by any provision of the Indian Succession Act that power or jurisdiction can be exercised by the High Court in cases in respect whereof the City Civil Court has no exclusive jurisdiction.*

37..... *It appears to me that S 5(3) of the City Civil Court Act as amended has affected the testamentary and intestate jurisdiction conferred on the High Court by Clause 34 of the Letters Patent only in cases arising*

exclusively within the territorial jurisdiction of the City Civil Court, i.e., where the deceased has died having a fixed place of abode and leaving all the assets within the City of Calcutta as defined by S. 2(3) of the City Civil Court Act. If either deceased has died having a fixed place of abode or leaving any asset outside the City of Calcutta but within the State then the High Court shall have jurisdiction to grant probate of letters or administration as the case may be under Clause 34 of the Letters Patent..... From the amendment of S. 5 of the City Civil Court Act and omission of S.300 of the Indian Succession Act the necessary intendment of the legislature appears to be that in cases arising exclusively within the territorial jurisdiction of the City Civil Court and in respect of which City Civil Court has exclusive jurisdiction as stated hereinbefore the High Court shall not exercise any power or Jurisdiction be it under Indian Succession Act or under Clause 34 of the Letters Patent. The necessary effect of the above amendment and omission, in my view, is that the power and jurisdiction of the High Court in the testamentary or intestate matter under the provision of Indian Succession Act have been totally taken away and partially under Clause 34 of the Letters Patent in cases arising exclusively within the territorial jurisdiction of the City Civil Court, i.e., where the deceased had his fixed place of abode and has also left all his assets within the territorial jurisdiction of the City Civil Court. High Court's jurisdiction under Clause 34 of the Letters Patent in respect of cases arising outside the territorial jurisdiction of the City Civil Court has not been affected..... Hence, in my view, the effect of the City Civil Court (Amendment) Act, 1980 should be restricted to cases exclusively triable by the City Civil Court. The scope of the City Civil Court Act, 1953 as

amended by the City Civil Court (Amendment) Act, 1980 should not be broadened.”

Since the testator in that case had his fixed place of abode and left behind properties in Howrah, outside the ordinary original civil jurisdiction of this Court which is co-extensive with the jurisdiction of the City Civil Court, it was held that this Court had jurisdiction to grant probate in respect of the testator’s will.

13. In ***Prabir Kumar Das v. Jayanti Das & Anr., reported at (2007) 1 CHN 843*** another learned Judge of this Court followed the decision in ***Sailendra Nath Sarkar (Supra)***, and observed as follows: -

“13. Considering these two Single Benches decision I am of the view that the learned Judges accurately interpreted the relevant provision of the statute and I do not find any scope of disagreement with Their Lordships. As I have already observed hereinbefore, the legislature by virtue of the amendment of the City Civil Courts Act cannot confer jurisdiction on the City Civil Court over the properties or place of abode outside the territorial jurisdiction of the said Court. In the first case being Sailendra Nath Sarkar (supra), the entire cause of action arose in Howrah. The learned Judge rightly held that the High Court did have the jurisdiction because of Clause 34 and the amended provision of section 5(3) of the City Civil Courts Act did not have any application. In the case of Tarak Bala Dasi (supra) the learned Judge rightly refused to entertain the probate application as the deceased left property outside the State and held Clause 34 not applicable beyond the State of West Bengal.”

14. In ***Pandraj Kunjilal Sadh (Deceased) and Rai Kumar Sadh v. Santosh Kumari Mahendra Kumar Sadh & Ors., reported at AIR 2012 Cal 7***, a Division

Bench of this Court while addressing the same issue came to the conclusion that “a competent legislature having competence over the subject-matter of legislation has specifically excluded the entire jurisdiction under the Indian Succession Act mentioned in Section 300 from the High Court and thus, the High Court now cannot exercise any power of Indian Succession Act in the matter of grant of a Probate under the said provision.....” It was finally held at paragraph 29 of the reported decision that the clear language of the 1980 amendment takes away “*the jurisdiction of the High Court to deal with an application under the Indian Succession Act if the cause of action arisen within the limits of the Original Side.*”

15. From the aforesaid provisions of law and decisions of this Court what clearly emerges is that the testamentary and intestate jurisdiction was conferred on the High Court by Clause 34 of the Letters Patent, 1865. That provision is the origin of the Calcutta High Court’s power to grant probate and letters of administration.

16. Section 300(1) of the Indian Succession Act, 1925, recognized such power of the High Court and clarified that the High Court shall exercise concurrent jurisdiction with the District Judge in all matters which the District Judge was empowered to deal with under the Indian Succession Act. Such matters included grant of probate and letters of administration.

17. Then came the City Civil Court Act, 1953, whereby the City Civil Court at Calcutta was established. Section 5(1) of the 1953 Act defines the local limits of the jurisdiction of the City Civil Court, to be the City of Calcutta. “City of Calcutta” is defined in Section 2(3) of the Act as “the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court.” Section 5(2) of the Act provides that subject to the provisions of sub-sections (3) and (4) of Section 5, the City Civil Court would have exclusive jurisdiction to try suits and proceedings of civil nature not exceeding Rs. 10 lakh in value. For the sake of continuity and completeness it may be noted that the pecuniary jurisdiction of the

City Civil Court was enlarged by the City Civil Court (Amendment) Act, 2013, which conferred concurrent jurisdiction on the City Civil Court along with the Calcutta High Court to try suits and proceedings of civil nature valued at more than Rs. 10 lakh and up to Rs. 1 crore. Therefore, it appears that under the 1953 Act, and prior to its amendment in 1980, the City Civil Court had jurisdiction to entertain probate proceedings if valued at a sum not exceeding Rs.10 lakh and if the cause of action arose within the City of Calcutta.

18. Then came the 1980 amendment. Section 5(3), which was inserted by the Amendment Act, conferred exclusive jurisdiction on the City Civil Court to try any proceeding under, *inter alia*, the Indian Succession Act, 1925. The jurisdiction of the High Court in that regard was taken away specifically.

19. Section 22 of the 1953 Act, stipulates that the enactments mentioned in the Second Schedule to the Act, shall stand amended in so far as West Bengal is concerned, to the extent and in the manner indicated in the said Schedule. The said Schedule was also amended by the 1980 Amendment Act. Certain provisions of the Indian Succession Act (in short 'the IS Act'), were amended in so far as their application to West Bengal is concerned. It was clarified that in respect of the area comprising the ordinary original civil jurisdiction of the Calcutta High Court, reference to a District Judge in the Indian Succession Act would be construed as reference to the City Civil Court at Calcutta. This amendment was brought in by adding a proviso to Section 2(bb) of the Indian Succession Act, as regards its application to the State of West Bengal. In Section 273 of the IS Act, Clause (a) of the proviso stood omitted thereby doing away with a situation where probate or letters of administration has been granted by the High Court. Section 300 of the IS Act was omitted altogether in so far as application of that Act to West Bengal is concerned. The other amendments are not immediately relevant.

20. From the above, it is quite clear that the Calcutta High Court's power to grant probate or letters of administration is no more there in cases where the City Civil Court at Calcutta has such power. In other words, if the testator resided within the City of Calcutta and left properties which were all in the City of Calcutta, only the City Civil Court shall have and the High Court shall not have jurisdiction to grant probate and letters of administration.

21. In the light of the aforesaid discussion, any confusion that may be there as regards the power/jurisdiction of this Court to grant probate or Letters of Administration is clarified as follows: -

(i) After the amendment of the City Civil Court Act, 1953, by the Amendment Act of 1980, this Court has no jurisdiction to grant probate or Letters of Administration in respect of cause of action arising exclusively within the ordinary original civil jurisdiction of this Court which is co-extensive with the territorial jurisdiction of the City Civil Court at Calcutta. This means that if the testator had his place of residence within the jurisdiction of the City Civil Court and left all properties situate within that jurisdiction, the City Civil Court will have exclusive jurisdiction in the matter of grant of probate or Letters of Administration. In such case, the High Court will have no jurisdiction.

(ii) If the testator had his place of residence outside the limits of the territorial jurisdiction of the City Civil Court and/or left any of his properties outside that jurisdiction but within the State of West Bengal, the High Court will have concurrent jurisdiction along with the concerned District Court to grant probate or Letters of Administration.

(iii) We further clarify that notwithstanding the omission of Section 300 of the IS Act by the 1980 amendment of the City Civil Court Act, 1953, the jurisdiction of the High Court under Clause 34 of the Letters Patent, 1865, to

grant probate or Letters of Administration remains unaffected in cases arising outside the territorial jurisdiction of the City Civil Court.

(iv) We are in complete agreement with the decision of a learned Single Judge of this Court, in the case of ***In the goods of: Sailendra Nath Sarkar, Deceased, Supra.***

22. The learned Single Judge also dilated on Section 273 of the IS Act, which reads as follows: -

“273. Conclusiveness of probate or letters of administration.—

Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:

Provided that probates and letters of administration granted—(a)by a High Court, or

*(b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees, shall, unless otherwise directed by the grant, have like effect throughout the other States [***].*

[The proviso to this section shall apply in India after the separation of Burma and Aden from India to probates and letters of administration

granted in Burma and Aden before the date of the separation, or after that date in proceedings which were pending at that date.]

*[The proviso shall also apply in India *** after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.]”*

23. From a bare reading of the section it is clear that the requirement regarding certification by the learned Judge that the value of the property and the estate affected beyond the limits of the State does not exceed 10 thousand rupees, applies when probates and letters of administration are granted by a District Judge and not by the High Court. If the intention of the legislature was otherwise, the proviso would have been framed differently. The requirement of the certification has been included only in sub-clause (b) of the proviso. That does not relate to sub-clause (a) of the proviso. This conclusion of ours is supported by the wordings of Clause 34 of the Letters Patent 1865, under which this High Court continues to retain jurisdiction to grant probate and Letters of Administration although that power under Section 300 of the IS Act has been taken away by the 1980 Amendment to the City Civil Court Act, 1953.

24. We now deal with Section 283 of the IS Act which has been extracted above. The learned Judge has held that issuance of citation is mandatory since there may be persons interested in the estate of the deceased who are residing outside West Bengal and who may not know about the proceedings for probate/ Letters of Administration in this Court. We are of the view that this apprehension of the learned Single Judge is unfounded.

25. Section 218 of the IS Act indicates the persons to whom administration may be granted where the deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person. The said Section read as follows: -

“218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.—

(1)If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2)When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3)When no such person applies, it may be granted to a creditor of the deceased.”

It is thus clear from the aforesaid section that administration of the estate of a deceased may be granted to a person who would be entitled to any part of the estate of the deceased if there was no will of the deceased. This is borne out by the phrase “according to the rules for the distribution of the estate applicable to the case of such deceased.” Only if no person contemplated in sub sections (1) and (2) of Section 218 applies for probate or letters of administration, the same may be granted to a creditor of the deceased. The rules for distribution of the estate applicable in the case of a Hindu deceased is to be found in Section 8 of the Hindu Succession Act, 1956. That Section is set out hereunder:-

“8. General rules of succession in the case of males.—

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a)firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b)secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c)thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d)lastly, if there is no agnate, then upon the cognates of the deceased.”

The above Section refers to the schedule of the 1956 Act. The schedule is reproduced hereunder: -

“Class I

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son 1 [son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].

Class II

I. Father.

II. (1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister.

III. (1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter.

IV. (1) Brother’s son, (2) sister’s son, (3) brother’s daughter, (4) sister’s daughter.

V. Father’s father; father’s mother.

VI. Father’s widow; brother’s widow.

VII. Father’s brother; father’s sister.

VIII. Mother’s father; mother’s mother.

IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.”

26. The Schedule to the Hindu Succession Act does not include a creditor of a Hindu deceased. In other words, probate or Letters of Administration in respect of the will of a Hindu deceased cannot be granted to a creditor of the deceased or any other person who may be interested in the estate of the deceased if he does not come within the purview of Section 218 of the IS Act read with Section 8 of the Hindu Succession Act. There is a clear difference between a person having an interest in the estate of the deceased and a person who is interested in such estate. A person having an interest in the estate would include the legal heirs of the deceased as on intestacy as is contemplated by the Schedule to the Hindu Succession Act read with Section 8 thereof. There may be other persons like creditors, secured or unsecured, who may be interested in the estate of the deceased to recover their dues from the estate; they will however not be entitled to obtain probate or Letters of Administration in respect of the will of a deceased, if the persons or any of them apply/applies for the same.

27. Section 222 of the IS Act is also to be noticed in this context. The said Section read as follows: -

“222. Probate only to appointed executor.—

(1) Probate shall be granted only to an executor appointed by the Will.

(2) The appointment may be expressed or by necessary implication.”

The aforesaid Section makes it absolutely clear that only an executor appointed by the will of a deceased is entitled to obtain probate in respect of the will and no other person.

28. What logically and indubitably follows from the above discussion is that in a case where all the legal heirs of a deceased who would have been entitled to the

estate of the deceased have given their consent to grant of probate in favour of the executor named in the will of the deceased, there can be no reason to issue citation. Even assuming that any fraud is played by some of the legal heirs of a deceased in collusion with the executor named in the will of the deceased by suppressing the name of any other legal heir of the deceased, that other legal heir would have a complete remedy under Section 263 of the IS Act to apply for revocation or annulment of the probate granted to the applicants by showing just cause.

29. Section 263 of the IS Act is set out hereunder:

“263. Revocation or annulment for just cause.—

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. —Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The Will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a latter Will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.”

It may be noted that Clause (b) of the Explanation specifically provides that the grant of probate or Letters of Administration may be revoked if the same was obtained fraudulently by concealing from the Court something material to the case. Illustration (ii) is also instructive.

30. The concern of the learned Judge seems to stem from the provision of Section 283 (3) which provides for sending a copy of the citation to the relevant District Judge of another State within whose jurisdiction any portion of the assets of the deceased may be stated to have been situated so that the same can be published in the same manner as if it were a citation issued by himself. The learned Judge seems to be concerned about the legal heirs who may be residing in such other State. Such apprehension is also unfounded. As already discussed hereinabove the provisions of Section 263 are complete answer to such an apprehension. Furthermore, the provisions of Section 283 (3) would become invocable only if citation has been issued. The words “shall cause a copy of the

citation to be sent to such other District Judge” clearly establish that. There can be no copy of a citation without the citation being issued first.

31. Rules 9,13 and 14 of the Original Side Rules of this Court have been extracted above. Rule 9 specifically contemplates that if other persons having a right to take the grant of probate prior or equal to that of the applicant have signified their consent to the probate application a citation need not be issued. Therefore, if all the legal heirs of the deceased have consented to grant of probate in favour of the executor named in the will of the deceased, citation need not be issued. That is the scenario that obtains in the facts of the present case.

32. It follows that if citation need not be issued and has not been issued, the question of complying with Section 283(3) of the IS Act does not arise. Section 283 (3) of the IS Act need to be complied with only when a citation is in fact issued and the facts of a case otherwise come within the purview of that Section. Therefore, in the present case, where citation need not be issued and has not been issued, the question of compliance with Section 283(3) of the IS Act does not arise.

33. In view of the aforesaid, the judgment and order impugned in this appeal is set aside the matter is remanded to the learned Single Judge having determination to hear the matter and decide the probate application in light of the observations made in this judgment and order.

34. The appeal and connected application are disposed of accordingly. There will be no order as to costs.

35. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)