

O.C No.03 of 2019 (CNR no.WBCC01-002392-2022)

Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)

Order No. 69 / Dated 29.04.2025

Parties have taken their respective steps.

Date is fixed for order on the petitions dated 12.03.2025 and 24.03.2025 which were heard at length on 28.04.2025 and all the petitions are taken up for order.

On perusal of the record it appears that petitioner has filed an application for recall and modification of order dated 27.02.2025 on the premises that by order dated 27.02.2025, the petitioner was directed to file indemnity bond of Rs.1,60,00,0000/- without considering the materials placed on record and the transaction dated 19.12.2023 was entered into in good faith to resolve long pending dispute and is in conformity with Registered Will dated 04.04.2006 as recorded by the Hon'ble High Court in CS no. 68 of 2011 and out of five legal heirs of the deceased Prema Gupta four have given consent to the said transaction and only Rs.1,10,00,000/- has been paid to Ankur Malik and Vneet Malik till date and remaining Rs.50,00,000/- is contingent and conclusion of transaction and the legal notice dated 12.02.2025 in respect of the said agreement has been issued by the shareholder of Calcutta Medical Center Limited seeking execution of POS and requires urgent direction to prevent hardship and it is prayed to read the undertaking dated 12.03.2025 filed by the consenting parties as a part of this application.

On further perusal of record, it appears that the consenting parties namely, Dr. Manjula Khadanwal, Smt. Usha Saxena and Smt. Anuradha Mailk filed another petition praying for waiver of the indemnity bond to be filed by Ankur Malik vide order dated 27.02.2025 on the basis of the undertaking filed by them.

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At the time of hearing, Ld. Advocate appearing for the petitioner submitted that the said transaction has been entered into in between Ankur Malik, Vneet Malik and the representatives of the Calcutta Medical Center with the consent of consenting parties and the other legal heir of Dr. Ashoke Kumar Gupta and the consenting parties were the confirming parties to the said Memorandum of Understanding / terms of settlement and the said settlement was entered into in connection with C.S. 68 of 2011 which was accepted by the Hon'ble High Court vide order dated 16.01.2024 and since the consenting parties confirmed the transaction, the petitioner need not execute the indemnity bond as directed vide Order dated 27.02.2025 and it is prayed to pass necessary order by recalling or modification of the said order.

Ld. Advocate appearing for the caveator, namely Dr. Kalpana Gupta submitted that the petitioner has intermeddled with estate left by the testatrix and accordingly this Court has been pleased to direct the petitioner to file indemnity bond to the extent of Rs.1,60,00,000/- and the instant petition is not at all maintainable and it is prayed to reject the respective petitions dated 12.03.2025 and 24.03.2025 filed by the consenting parties and petitioner.

Ld. Advocate appearing for the consenting parties submitted that the said settlement had been worked out in connection with C.S 68 of 2011 which was pending before the Hon'ble High Court at Calcutta and the said settlement was accepted by the Hon'ble High Court at Calcutta vide Order dated 16.01.2024 and since the said settlement was reached in between the parties with the consent of the heirs of the deceased testatrix the petitioner cannot be asked to submit an indemnity bond in

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respect of the said transaction and he prayed for necessary order on the basis of the undertakings given by the consenting parties.

On perusal of the record, it appears that admittedly the consenting parties are entitled to 3/5th share of the estate left by the testatrix.

On perusal of the Hon'ble Court's Order dated 08.04.2021 passed in C.S. no. 68 of 2011 annexed with their written objection of the petitioner to the petition under Section 253 of Indian Succession Act, it appears that the present petitioner has proposed to be substituted in the said suit on the basis of the present application for letters of administration of the Will of the deceased and it was observed by the Hon'ble High Court that ***"It would be appropriate to place the same embargo as passed earlier on July 21, 2011. The suit will not be tried till such time letters of administration is obtained or else if the letters of administration is refused, the suit will not be proceeded before the intestate heirs of the deceased are brought on record."*** and that order clearly puts an embargo on the petitioner to proceed with the suit pending before the Hon'ble Court before disposal of the present L.A case for Letters of Administration and a further embargo was put by the Hon'ble Court that in case of failure in Letters of Administration intestate heirs shall be substituted in the said suit.

Therefore in view of the order of the Hon'ble Court the petitioner cannot interfere with the estate of the deceased before he obtained Letters of Administration in respect of the Will left by the deceased.

This is the established principle of law that what cannot be done directly cannot also be done indirectly.

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At the time of hearing, Ld. Advocate for the petitioner pointed out the statement made in para no. 8 of the petition dated 24.03.2025 and admittedly caveator, Dr. Kalpana Gupta entered into two agreement for sale in April, 2019 in respect of which an application under Section 251 of the Indian Succession Act was filed by the petitioner and the said petition was rejected vide Order no. 41 dated 25.08.2023 and since the said order was not challenged before any higher forum it operates as constructive resjudicata and cannot be reopened afresh.

On perusal of the undertaking filed by the consenting parties, it appears that they have relinquished the claim against the amount of Rs.1,60,00,000/- in the event of the dismissal of the present petition of Letters of Administration and such relinquishment is applicable to the extent of their share in the estate of the deceased and it is also the duty of the court to protect the interest of the remaining legatee under the Will.

Therefore, having regards to the contention and counter contention raised by both sides and also the undertaking submitted by the consenting parties I am of the view that the provisions of the Indian Succession Act do not permit anyone to handle the estate left by the deceased under a Will save and except by the persons who are rightful executors or administrators and in such view of the fact I find nothing in this petition to modify or recall my earlier Order dated 27.02.2025 and both the petitions dated 12.03.2025 and 24.03.2025 stands rejected on contest accordingly.

Petitioner, Ankur Malik is directed to execute the indemnity bond within 07 days from this date in terms of the Order dated 27.02.2025.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.

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Later dated 29.05.2025

The petition filed by the caveator, Kalpana Gupta under Section 151 of C.P.C is taken up for order.

On perusal of the petition, it appears that the said petition has been filed with the prayer to dismiss the application for the petition for letters of administration with immediate effect for non compliance of the order of this court dated 27.02.2025 and further be pleased to declare that the alleged transaction made by the petitioner, Ankur Malik in conclusion and conspiracy with his brother and mother as fraudulently, void and illegal in the eye of the law and the same are not binding upon the estate of Prema Gupta.

Heard both sides on the petition.

Since the first part of the prayer made by the caveator is already addressed in Order no. 69 dated 29.04.2025, the second part of the prayer is not sustainable under the provisions of the Indian Succession Act and the instant petition stands rejected summarily.

Fix 19.05.2025 for hearing of the petition under Order XVIII Rule 17 of C.P.C. Filed by the petitioner.

Written objection if any, in the meantime.

D/c by me,

Judge.

Judge, Bench-V,
City Civil Court, Calcutta.