

IN THE HIGH COURT AT CALCUTTA
TESTAMENTARY AND INTESTATE JURISDICTION
ORIGINAL SIDE

Present :
THE HON'BLE JUSTICE ARINDAM MUKHERJEE

PLA 115 of 2023

IN THE GOODS OF :
PRABIR CHANDRA SEN, DECEASED

For the Petitioner : Mr. Jayanta Mitra, Senior Advocate,
Mr. Soumyajit Ghosh, Adv.,
Mr. Ashoke Basu, Adv.
Mr. A.C. Kar, Adv..
Mr. Anirban Kar, Adv.
Mr. Siddhartha Lahiri, Adv.
Mr. Debraj Dutta, Adv.
Mr. Rajeev Kumar Jain, Adv.
Ms. Laila Khatun, Adv.
Ms. Sreyasi Chatterjee, Adv.
Ms. Sulagna Mukherjee, Adv.
Ms. Paulami Bose, Adv.

.....Advocates

Last Heard on : 29.02.2024

Judgment on : 16th January, 2025

Arindam Mukherjee, J:

1. A short but a very important point of law has fallen for consideration in these bunch of non-contentious probate proceedings wherein the concurrent jurisdiction of this Court under Section 300 of the Indian Succession Act, 1925 (hereinafter referred to as the '1925 Act') as to whether the provisions of Section 283(2) of Indian Succession Act, 1925 (hereinafter referred to as 1925 Act) is a mandatory provision.

Section 283 of the 1925 Act is set out hereunder for convenience.

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 courthouse, and also in 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.

In order to examine the application of Section 283(3) of the 1925 Act in a more effective manner it is necessary to

understand the jurisdiction exercised by this Court while granting probate or letters of administration at the present. The concurrent jurisdiction of this Court as envisaged under Section 300 of the 1925 Act is set out hereunder for ready reference.

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.*

This High Court being a Chartered High Court all along exercised Testamentary and Intestate jurisdiction under Clause 34 of Letters Patent, 1865 which is set out hereunder.

“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, 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 Bengal Division of the Presidency of Fort William provided always, that nothing in these Letters Patent contained shall interfere with the 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.*

2. Prior to the enactment of the 1925 Act, the substantive law which governed the grant of Probate and Letters of Administration were the

Indian Succession Act, 1865, Hindu Wills Act, 1870 and Probate and Administration Act, 1881. All these three Acts along with others operating in this field were consolidated in the 1925 Act.

3. This Court prior to the promulgation of City Civil Courts Act, 1953 which took place on 1st September, 1953 (hereinafter referred to as 1953 Act) and even thereafter till the amendment by West Bengal Act 60 of 1980 was brought to the Second Schedule of the 1953 Act was exercising the Testamentary and Intestate jurisdiction under Clause 34 of Letters Patent, 1865 by virtue of the provisions of Section 2(bb) of the 1925 Act wherein a Judge in the Original Side of this Court was exercising the jurisdiction of Principal Civil Court of Original Jurisdiction which has been substantially taken away by the 1980 Amendment brought in to the Second Schedule of 1953 Act. This position was for the first time elaborately discussed in **1984 (2) CHN 99 (In the goods of Sailendra Nath Sarkar, Deceased)** and further clarified in **2006 (2) CLJ 460 (Prabir Kumar Das vs. Jayanti Das and Ors.)** and further clarified. In Prabir Kumar Das (supra) a Co-ordinate Bench of this Court clearly held that after the City Civil Court (Amendment) Act, 1980, the High Court (i.e., this Court) cannot exercise its jurisdiction by virtue of Clause 34 of the Letters Patent, 1865 in cases of testamentary and intestate jurisdiction in respect of matters arising exclusively within the territorial jurisdiction of the City Civil Court that is to say where the deceased had a fixed place of

abode within the ordinary original civil jurisdiction of this Court and all his assets and properties were also located within such jurisdiction. In order to explain the position an example was given where a deceased had a fixed place of abode outside the jurisdiction of this Court but had some properties and assets within the jurisdiction of this Court, then this Court can entertain an application for grant of probate or letter of administration exercising concurrent jurisdiction under Section 300 of the 1925 Act but not as Principal Civil Court of Original Jurisdiction. Same will be the situation where the fixed place of abode is within the jurisdiction of this Court but assets and properties are partly within and partly outside the jurisdiction of this Court. The position has been further elucidated by a Division Bench of this Court in the judgment reported in ***AIR 2012 Cal 7 [In the goods of Pandraj Kunjilal Sadh (Deceased) and Rai Kumar Sadh vs. Santosh Kumari Mahendra Kumar Sadh & Ors] : 2012 (1) CHN 443.***

“19. After the amendment of the City Civil Court Act in the year 1980, the provision for grant of probate under the Indian Succession Act has been totally taken away from this Court and has been conferred upon the City Civil Court notwithstanding the provision contained in the Letters Patent and the consequent Rules mentioned in the Original Side Rules.”

The Division Bench has also given certain examples in paragraph 21 thereof as to where this Court can exercise power under Clause 34 of Letters Patent, 1865 read with the Original Side Rules of this Court.

“21. After hearing the learned Counsel for the parties, we find substance in the contention of Mr. Bachawat that so far probate of a Will executed by a Hindu is concerned, the same can be applied for only under the provisions of the Indian Succession Act and there is no other provision of law now prevailing in this country for dealing with such an application.”

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.
7. This also nullifies the view of the Single Judge of Delhi High Court expressed in **AIR 1985 Delhi 453 (Smt. Kanta vs. State & Anr.)** as

High Court under proviso (a) of Section 273 will mean only where the High Court is exercising its jurisdiction as a principal Civil Court of original jurisdiction and not the concurrent jurisdiction under Section 300 of the 1925 Act. The ratio laid down in **Smt. Kanta (supra)** will apply in respect of this Court only where this Court is exercising jurisdiction under Clause 34 of the Letters Patent.

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.”

- 11.** On a holistic reading of the definition of citation as set out hereinabove in the context of a case for grant of probate or letters of administration it only means that a person who is not a party to the proceedings is made aware about the proceedings so that anyone who intends to watch the Will being proved or administration of an estate being granted can do so.
- 12.** In order to morefully appreciate the words “persons whose interest are or may be affected” we should keep the following in mind.
- 13.** An order granting probate or letters of administration is an order in rem. So it is necessary to give widest publicity regarding the filing of a probate proceedings or one for letters of administration. Citation is the only method to extend this scope. An executor/executrix who files an application for grant of probate may or may not be a family member and as such may not be aware of the persons who are interested. To clarify this position an example of a Hindu woman who leaves behind a will can be cited. The testatrix may leave behind an estate comprising of properties inherited from her husband as also from the father’s side. In such a case the heirs of the husband as also from the father’s side are to be cited. The executor may not know about the composition of the estate or the particulars of the heirs/heireesses from the two sides for which citation is required. It may also happen that the property coming from the father’s side of the testatrix may be situated in any other State or

District for which citation in such a place is also necessary. The situation, however, in case of letters of administration with a Will annexed is different. It can be filed by a beneficiary under the Will where there is no executor named therein or the executor is either dead or have removed his executorship or by a legatee where there is no will left behind by the deceased. In either of the cases it may not be known to the applicant as to who are the interested persons, whose interests are or may be affected. It may also be a case where the applicant knowingly suppress the particulars of the heirs/heiresses or persons interested.

14. The interested persons do not only mean the heirs/heiresses in intestacy but also others who are interested in the Will and the estate. There may be lot others like creditors and other interest holders who should be made known about the proceeding. By giving a restrictive definition that the interested persons mean only the heirs/heiresses in intestacy will frustrate the whole object of issuance of citation particularly when the order is one *in rem* and a grant may be revoked under Section 263 of the 1925 Act on that ground of not citing an interested person alone.

15. Thus it cannot be said that citation once issued to the heirs/heiresses in intestacy closes the chapter of citation. Even a person having bare minimum interest can file a caveat and oppose the grant for which citation has to be of wide publicity.

16. This also takes care of the argument advanced on behalf of the applicant that in a non-contentious cause where the heirs/heirss 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.

17. Similarly, the words “rightful parties” in Rule 9 of Chapter XXXV of the Original Side Rules of this Court cannot be given a restrictive construction by referring to only the heirs/heirss in intestacy. It is to be also noticed that these rules does not include probate proceedings but restricts itself to letters of administration. Even assuming without admitting that this rule or principles analogous thereto also applies to

probate proceedings, then also such a restrictive construction goes against the very object of issuing citation as discussed above.

18. In the 1925 Act though the word “citation” has been in various section but does not qualify the same either as “General Citation” or “Special Citation”. It is only in Rule 10 and 11 under Chapter XXXV of the Original Side Rules of this Court that there is mention of ‘General’ and Special Citation. General Citation is to be issued to all persons claiming to have any interest in the estate of the deceased which is normally directed to be published in the new paper Special Citation on the other hand is to dedicated persons required to be cited under Section 283(3) of 1925 Act, the citation will mean the general citation.

19. Now coming to the two judgment of the Hon’ble Supreme Court reported respectively in **2008(1) SCC 267 (Basanti Devi vs. Ravi Prakash Ram Prasad Jaiswal)** and **2018 (1) SCC 271 (Lynette Fernandes vs. Gertie Mathias)** which have been cited at the time of hearing it is found that both the judgment were delivered in the context of revocation of grant under Section 263 of the 1925 Act. In **Basanti Devi (supra)** the Hon’ble Supreme Court after considering the provisions of Section 283(3) of the 1925 in the context of revocation of grant has clearly held that the provisions of Section 283(3) of 1925 Act is mandatory and non-compliance thereof will lead to revocation of grant. In **Lynette Fernandes (supra)** the application

for revocation was made after 36 years. The Single Judge as also the Division Bench of the concerned High Court declined to revoke the grant for non-compliance of the provisions of Section 283(3) of the 1925 Act as on the facts of the case it was observed that issuance of citation at a particular place was not fatal as it did not effect the right of any person. I am unable to accept the ratio laid down in **Lynette Fernandes (supra)** as at the revocation stage it may on a consideration of the facts of a case, the Court may find that non-issuance of citation as required under Section 283(3) of 1925 Act may not be fatal but at the initial stage that is at the time of grant, the provisions of Section 283(3) of 1925 Act are required to be complied with as at that stage it is not known to the Court whether non-issuance of citation by complying with the provisions of Section 283(3) of 1925 Act will be fatal or not or will be a mere irregularity. Moreover, it did not take into account the ratio laid down in **Basanti Devi (supra)** which clearly held that the provisions of Section 283(3) of 1925 Act is mandatory.

20. Coming to the order of a Co-ordinate Bench passed on 6th December, 2024 (**In the Goods of Rabindra Sekhar Prasad**) I find that the learned Judge after adverting to the facts of the case has held that issuance of citation in that case as under the provisions of Section 283(3) of the 1925 Act is concerned will not serve any fruitful purpose and as such directed for newspaper publication without

issuance of citation. The learned Single Judge, firstly, did not hold that provisions of Section 283(3) is not mandatory. The said judgment also did not take into consideration the two judgment of the Hon'ble Supreme Court in ***Basanti Devi (supra)*** and ***Lynette Fernandes (supra)***. Moreover, it is well-settled position of law that where a statute prescribe for doing a thing in a particular manner, it has to be done in such manner or not at all. One can refer to the judgment reported in ***[AIR 1936 PC 253 [Nazir Ahmed vs. King Emperor] in this context.*** The learned Single Judge, therefore, would not to have held that the citation should be issued to the concerned District Judge as under Section 283(3) of the 1925 Act had the correction position been shown to the learned Judge and the publication part in compliance of the provisions of Section 283(3) of the 1925 Act would have been left to the said concerned District Judge.

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.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)