

(2013) 04 CAL CK 0064

Calcutta High Court

Case No: G.A. No. 3327 of 2012 and P.L.A. No. 180 of 2012

In Re: Kalyan Kumar Bose
(Deceased)

APPELLANT

Vs

RESPONDENT

Date of Decision: April 4, 2013

Acts Referred:

- Succession Act, 1925 - Section 213(2)

Citation: (2013) 5 CHN 648 : (2013) 3 WBLR 211

Hon'ble Judges: Indra Prasanna Mukerji, J

Bench: Single Bench

Advocate: Anirban Roy, for the Appellant;

Judgement

Indra Prasanna Mukerji, J.

An application for grant of probate of the Will of an Indian Christian, Kalyan Kumar Bose, deceased (PLA No. 160 of 2012) was made ready and filed by the Advocates-on-Record for the executor and petitioner, M/s. Khaitan & Co. Court fee of Rs. 50,000/- was paid at the time of filing of the application.

2. Thereafter, the Advocates-on-Record realised that an application for grant of probate of a Will of an Indian Christian was not required at all by virtue of Section 213(2) of the Indian Succession Act, 1925.

3. By this application the executor of the Will prays for refund of the Court fees.

4. Bhaskar Bhattacharya, J. in *Dr. Apala Chakraborty v. The District Judge, North 24 Parganas*, [Dr. Apala Chakraborty Vs. The District Judge, North 24 Parganas, Barasat](#), put it so wonderfully that the power to order refund of court fee was inherent power of the Court. It was exercised to do real and substantial justice between the parties. Such power could be exercised, inter alia, when the court fee was paid by mistake. Moreover, his Lordship said that the court fees were paid on the grant and not on

the application.

5. There is no doubt that in this case court fee was paid on a bona fide mistaken view of the law. Equally important is that on the basis of this judgment the payment of court fees, pending grant, is to be taken as provisional. Unless there is grant of probate there is no vested right in the State to receive the fees. In my opinion, this kind of a mistake is one of the grounds when the Court can exercise this inherent power to do justice.

6. Hence, following the dictum laid down by his Lordship in the above case, I allow this application by passing an order in terms of prayer (a) of the Notice of Motion. The application for grant of probate, PLA No. 180 of 2012, is dismissed as withdrawn.

7. The Registrar, Original Side will issue the necessary certificate under Rule 8 Chapter VIA of the Original Side Rules upon production of the original stamps or stamp paper representing payment of court fees. Registrar, Original Side and all parties are to act on a signed photocopy of this order on the usual undertakings.