

Sudipta Ghosh Vs Shakuntala Roy Chowdhury

Court: Calcutta High Court

Date of Decision: Aug. 8, 2014

Acts Referred: West Bengal Court Fees Act, 1970 " Section 32

Citation: AIR 2014 Cal 237 : (2015) 1 CHN 693

Hon'ble Judges: Debangsu Basak, J

Bench: Single Bench

Advocate: Kaustav Chandra Das, Advocate for the Appellant; Anirban Banerjee, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Debangsu Basak, J.

The revisional application is directed against Order No. 4 dated February 14, 2014 passed in O.S. No. 78 of 2013.

By the order impugned the learned Judge allowed the application for postponement of payment of court fees till the grant of the letters of

administration.

2. The petitioner contends that, under Section 32 of the West Bengal Court-Fees Act, 1970 and Schedule I serial No. 10 the ad valorem court

fees on the valuation of the properties involved in the probate proceedings are required to be paid. The learned Judge therefore, acted with

material irregularity in not considering such provision. Postponement of payment of Court fees is contemplated under Section 32. The order

impugned, is contrary to such provision and is, therefore; required to be interfered with. The opposite party plaintiff should be directed to put in

court fees commensurate to Section 32 of the West Bengal Court Fees Act, 1970 and Schedule I serial No. 10 thereof.

3. On behalf of the opposite party plaintiff it is contended that, the entire court fees are not required to be paid prior to the grant of probate in a suit

where the probate application is taken up as a contentious cause. In support of such contention reliance is placed on Pritish Kumar Mitra Vs.

Prosanto Kumar Mitra and Another, and All India Reporter 2005 Calcutta page 231 (Mihir Saha & Anr. v. Tanmoy Saha & Ors.). The opposite

party submits that, they would pay the court fees when the probate is granted in the suit.

4. I have considered the rival contentions of the parties and the materials on record.

5. An application for grant of probate filed by the opposite party plaintiff was objected to by the petitioner herein. Consequently, the probate

proceeding was directed to be treated as a contentious cause and O.S. No. 78 of 2013 came into being. In the contentious cause the opposite

party plaintiff applied for postponement of payment of court fees till the grant of probate. Such application was objected to by the petitioner. By

the impugned order the learned Court allowed the petition of the opposite party plaintiff and permitted the opposite party plaintiff to pay court fees

at a later stage.

6. In *Prithvi Kumar Mitra Vs. Prosanto Kumar Mitra and Another*, the Division Bench of this Court held that,

When an application for Probate or Letters of Administration is made to any Court, ad valorem Court-fees on the value of the assets of the estate

of the testator, be it according to the valuation put in the Affidavit of Assets or be it the valuation fixed by the Collector or finally decided by the

Court under Section 19-H, is not payable until the Court has proceeded with the hearing of the application by taking evidence affording

opportunity to the propounder to prove the Will and also his right to an order entitling him to the grant of Probate or Letters of Administration.

Only when the Court has arrived at the decision that the propounder is entitled to the grant of Probate or Letters of Administration, then only, but

before the order entitling the petitioner to the grant of Probate or Letters of Administration is made the Court-fees mentioned in Article 11 of the

First Schedule of the Court-fees Act need be paid upon the valuation found by the Court under Section 19-H. In a Probate proceeding Court-fees

are paid on the grant but not on the application. An unsuccessful propounder of a Will is not liable to pay Court-fees mentioned in Section 19-I of

Court fees Act.

7. *Mihir Saha and Another Vs. Tanmoy Saha and Others*, deals with a revisional application directed against an order calling upon the plaintiff in

such proceedings to pay further court fees for getting probate of the Will. In such circumstances, the Court holds as follows:-

7. After hearing the learned counsel for the parties and after going through the provisions contained in West Bengal Court Fees Act, 1970 it

appears that an applicant for grant of probate is required to file application initially before the District Delegate with fixed court fees as provided in

serial No. 9 of the schedule II. If the said proceedings become contentious, in such a case, he is required to take back the said application and re-

file it before the District Court and affix court fees in accordance with the direction contained in the proviso to the said serial No. 9 of the schedule

II.

8. Finally, if the Court decides to grant probate after being satisfied that the Will in question was really the last Will and testament of the deceased

testator and that it was duly executed and attested, the Executor is under obligation to pay further court fees on the basis of entire valuation of the

property covered by the Will as provided in serial No. 10 of the schedule I. If the application for probate is unsuccessful, in such a situation, the

Executor is not required to pay any further court fees apart from those paid in terms of serial No. 9 of schedule II. Therefore, the liability to pay the

final court fees in terms of serial No. 10 of Schedule I on the basis of valuation of the subject-matter covered under the Will accrues only when the

Court decides to grant probate. Thus, it necessarily follows that a successful Executor is required to pay such court fees at the rate prevailing on

the date of grant of probate and not earlier.

8. Learned Counsel for the petitioner contends that Mihir Saha and Another Vs. Tanmoy Saha and Others, supports his case. He relies on the

second sentence of paragraph 7 to submit that, court fees in accordance with the directions contained in proviso to serial No. 1(9) of Schedule II

is required to be paid by the applicant for grant of probate and in the instant case by the opposite party plaintiff. The learned Counsel for the

petitioner also contends that, the amendment of the West Bengal Court-Fees Act, 1970 was introduced subsequent to Pritish Kumar Mitra Vs.

Prosanto Kumar Mitra and Another, and, therefore, Pritish Kumar Mitra (supra) should not be the guiding law.

9. Pritish Kumar Mitra Vs. Prosanto Kumar Mitra and Another, held that, in a probate proceeding court fees are paid on the grant and not on the

application. It went on to say that an unsuccessful propounder of the Will is not liable to pay court fees mentioned in Section 19-I of the West

Bengal Court-Fees Act, 1970.

10. Mihir Saha and Another Vs. Tanmoy Saha and Others, is of the view that, when an application for grant of probate or letters of administration

is required to be taken back from the District Delegate for refilling it before the District Judge court fees in accordance with the directions

contained in the proviso to serial No. 1(9) of Schedule II is required to be paid. In the event the Court decides to grant probate, the applicant

applying for the grant of probate is under obligation to pay court fees on the basis of the entire valuation of the property covered by the Will as

provided in serial No. 10 of Schedule I. If the application of probate is unsuccessful, in such a situation, the applicant is not required to pay any

further court fees apart from those paid in terms of serial No. 1(9) of Schedule II.

11. In the instant case, by the order impugned the learned Judge postponed the liability of the opposite party plaintiff of payment of the court fees

till the final outcome of the proceedings. The Court is yet to grant the letters of administration. Obviously, the Court will ask for the final court fees

at the time when it decides to grant the letters of administration.

12. The proceedings are before the District Court. The applicant for the letter of administration is required to pay court fees in accordance with the

proviso to serial No. 1(9) of Schedule II.

13. Proviso to Schedule I serial No. 1(9) lays down that if a caveat is entered and the application is registered as a suit one-half of the scale of fee

prescribed in serial No. 1 of Schedule I on the market value of the estate less the fee already paid on the application shall be levied. In the instant

case, a caveat is entered and the application is registered as a suit. The applicant/plaintiff is, therefore, required to pay one-half of the scale of fee

prescribed in serial No. 1 of Schedule I on the market value of the estate less the fee already paid on the application.

14. The impugned order is set aside. The learned District Judge will afford an opportunity to the opposite party plaintiff to put in court fees in

accordance with the proviso to serial No. 1(9) of Schedule II of the Court Fees Act, 1970. With such observations C.O. No. 799 of 2014 is

disposed of. No order as to costs.