



2026:AHC:77134

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 48 of 2025

Shailendra Jain

.....Appellant(s)

Versus

State Of Up And 2 Others

.....Respondent(s)

Counsel for Appellant(s) : Rajnish Sahai Saxena, Shreya Gupta,
Vikas Mathur

Counsel for Respondent(s) : Kripa Shanker Pandey

A.F.R.

Court No. - 39

HON'BLE SANDEEP JAIN, J.

1. The instant appeal has been filed by the petitioner/appellant under Section 299 of the Indian Succession Act, 1925, against the impugned order dated 30.07.2024 passed by the Additional District Judge, Court No. 10, Kanpur Nagar, in O.S. No.3 of 2023 (Shailendra Jain vs. State of U.P. and others), whereby the appellant's application 39-A Kha has been rejected, whereby it was prayed that the appellant be permitted to make good the deficiency of Court fees after the letters of administration was granted in his favour.

2. The facts in brief are that the petitioner/appellant applied for grant of letters of administration regarding the unregistered Will dated 16.4.2022, which was executed by his mother Smt. Veer Bala Jain in favour of the appellant whereby all her movable and immovable assets were bequeathed to the appellant. It is the case of the appellant that his father Jitendra Kumar Jain died on 22.11.2004 and his mother Smt. Veer Bala Jain also died on 20.05.2022, as such, after her death the above Will came into effect and for getting letters of administration, the appellant filed O.S. No.3 of 2023 before the Court of District Judge, Kanpur Nagar, which was later on transferred to the Additional District Judge, Court No.10, Kanpur Nagar.

3. It is apparent that at the time of filing the above suit, the petitioner-appellant only paid Court fees of Rs.25/-, whereas the valuation of the suit

was Rs.15,00,000/-. A preliminary objection was raised by the Munsarim that the Court fees paid by the petitioner-appellant was deficient by Rs.1,12,882.50 and on this, the petitioner moved an application 39-C dated 13.10.2023 before the trial court to permit him to make good the deficiency of Court fees after the petition seeking letters of administration is allowed and not before the passing of the order of the court.

4. The above application of the petitioner was objected by the contesting respondent No.3 Smt. Shweta Jain on the ground that letters of administration has been sought regarding unregistered Will dated 16.04.2022, which is doubtful, which has not been executed by Smt. Veer Bala Jain, which has been challenged by her. It was further averred that a Court fees of Rs.1,12,882.50 paise was required to be paid on it and as such, without paying this amount the petition seeking letters of administration was not legally maintainable.

5. The trial court vide impugned order dated 30.07.2024 has concluded that as per report of Munsarim dated 16.03.2023, there is a deficiency of Court fees of Rs.1,12,907.50 paise but the petitioner has only paid Rs.25/-, as such, the deficiency of Court fees of Rs.1,12,882.50 paise remains, which is required to be made good. The trial court considered the case law submitted by the petitioner reported in AIR 2010 Uttarakhand 22, but still concluded that since the petition has been converted into an original suit, being a contentious case, as such, the above precedent was not applicable and the petitioner is required to pay ad-valorem Court fees under Section 7(iv-A) of the Court Fees Act, which has not been paid by the petitioner at the time of filing of the petition. In the light of this reasoning, the petitioner was directed to make good the deficiency of court fees of Rs.1,12,882.50 paise, aggrieved against which the petitioner has filed this Appeal under Section 299 of the Indian Succession Act, 1925.

6. Ms. Shreya Gupta, learned Counsel for the appellant submitted that at the time of applying for letters of administration, the petitioner is only required to pay the fixed Court fees of Rs.25/- as per Schedule II of the Court Fees Act and only after the court comes to the conclusion that the letters of administration is to be granted to the petitioner for a particular amount only then the petitioner is required to pay Court fees on it in

accordance with Article 11 of Schedule I of the Court Fees Act, 1870. She further submitted that there is similar provision also for grant of succession certificates under the Indian Succession Act, 1925, where also the required Court fees is paid after the grant of succession certificate. She further submitted that similar controversy was decided by the Uttarakhand High Court in the case of *Dr. Pushpa Puri Memorial Charitable Trust, Mussoorie and Another vs. 2nd Additional District Judge, Dehradun and Another AIR 2010 UTTARAKHAND 22* , wherein it has been specifically held that the complete Court fees has to be paid only at the time of grant of letters of administration or probate.

7. In the above facts, it was submitted that the trial court has erred in rejecting the petitioner's application 39-A Kha and as such, the appeal be allowed and the petitioner-appellant be permitted to deposit the deficient court fees at the time of grant of letter of administration in his favour.

8. Per contra, learned Counsel for the contesting respondent No.3 submitted that the order is perfectly justified because the petitioner was required to pay the whole amount of Court fees of Rs.1,12,907.50 paise, which has not been paid by the petitioner, as such, the letters of administration cannot be granted in his favour. Learned Counsel further submitted that the letters of administration cannot be granted to the petitioner on the basis of unregistered Will, which is a forged and fabricated document. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed at the admission stage.

9. I have heard learned Counsel for the parties and perused the impugned order and documents submitted with the appeal. The appeal is admitted.

10. A very short question arises in this appeal whether the petitioner is required to deposit the entire amount of Court fees at the time of applying for letters of administration under Section 276 of the Indian Succession Act, 1925 or he can apply for it with a Court fees of Rs.25/- in accordance with Schedule II of the Court Fees Act, 1870 and later on make good the deficiency in accordance with Article 11 of Schedule I of the Court Fees Act, 1870, at the time of grant of letter of administration or probate.

11. It is apparent from the facts of this case that the petitioner is seeking

letters of administration under Section 278 of the Indian Succession Act, 1925 regarding the unregistered Will dated 16.04.2022 of his late mother Smt. Veer Bala Jain, who has died on 20.05.2022.

12. It is also apparent that the petitioner has only paid a fixed Court fees of Rs.25/- under Schedule II of the Court Fees Act, 1870 and it is also apparent that Article 11 of Schedule I of the above Act prescribes the Court fees which is to be paid on a petition seeking letters of administration. If the above two provisions are reconciled then it is apparent that the Court fees prescribed under Schedule II is only a token amount whereas the full Court fees has been prescribed under Article 11 of Schedule I of the Court Fees Act. If the Court fees of Rs.25/- was sufficient then there was no need for the Legislature to enact Article 11 of Schedule I of the Act. It is well settled that all the provisions of the statute are to be harmoniously construed and an interpretation, which renders any provision otiose is to be avoided. In view of this legal principle, it is apparent that at the time of applying for the letters of administration, only a token amount of Rs.25/- is to be paid in accordance with Schedule II of the Act, 1870 and the remaining amount is to be paid under Article 11 of Schedule I, at the time of grant of letter of administration or probate.

13. This Court in the case of *Km. Rakhi and Another vs. First Additional District Judge, Firozabad and others 1999 SCC OnLine All 723*, has held that on petition filed under Section 379 of Indian Succession Act, 1925, for issuance of succession certificate, it is not necessary for the petitioner to pay the entire Court fees, except the Court fees of Rs.25/-, while filing the application for succession certificate. It has been further held that complete Court fees has to be paid after the application for succession certificate is allowed.

14. The Uttarakhand High Court in the case of *Dr. Pushpa Puri Memorial Charitable Trust* (supra), has also held that in a petition filed under Section 276 for grant of letters of administration under Indian Succession Act, 1925, the petitioner need not deposit the entire amount of Court fees at the time of filing of the petition and he is only required to pay court fees of Rs.25/- as per Schedule II of Court Fees Act, 1870 and only when the letters of administration are issued, he is required to pay

complete court fees.

15. The High Court of Bombay in the case of ***Prakashchandra Deokaranji Bhoot and Others vs. Manoharlal Deokaranji Bhoot and Another*** 2023 SCC OnLine Bom 1166, while considering court fees payable on application for grant of Succession Certificate under the Indian Succession Act, 1925, held as under:-

“14. A reading of Sub-Section (1) of Section 379 suggests that every application for a certificate shall be accompanied, not by court-fees, but by a sum equal to such court-fee as may be payable in respect of a Succession Certificate. Sub-Section (1) of Section 379 of the Act, does not prescribed the consequence of non-deposit of the sum referred to therein, when not accompanying the application.

15. It is thus clear that the provision of Section 379 do not prescribed for the payment of requisite court-fee along with the application but prescribe the deposit of a sum of money in the Court, which would be ultimately expended, under orders of the Court, towards purchase of stamp to be used for denoting the fee payable on the value of each of the shares of the successors. In the event of the Court deciding not to allot any share or to dismiss the application, the parties who has deposited such sum would be entitled to a refund of the same in terms of Sub-Section (3) of Section 379. The scheme of Section 379 itself denotes that the sum to be deposited is not actual court-fee under the Court Fees Act but an amount which may be expended or refunded, at the time of final orders to be passed on the application. It would stand to reason therefore, that the provision of Section 379 could not be mandatory and require such a sum or fee to be deposited as a sine qua non for the maintainability of an application under Section 372 of the Act.

16. Looked at from a different angle, neither the provision of Section 372 nor those of Section 379 in any manner lay down that a Court dealing with such an application would lack jurisdiction to proceed with the matter in the absence of the sum required to be deposited under Sub-section (1) of Section 379. The jurisdiction of the Court to proceed to hear an application for issuance of a Succession Certificate would not depend upon whether the sums specified under Sub-section (1) of Section 379 has been deposited or not; however, a combined reading of Sub-section (1) & (3) of Section 379 of the Act, would suggest that the Court would not issue a Succession Certificate on the culmination of the proceedings, to a party declared as a successor

or having a share in the estate, unless the requisite court-fees payable on such share is paid before issuance of such a certificate.

20. Considering the provisions of Section 372 read with Section 379 of the Indian Succession Act, 1925, in answer to the questions formulated in para 3 above, I am of the view, for the reasons discussed, that the deposit of the sum to be expended on the fee referred to in Sub-section (1) of Section 379 is not mandatory, and non-deposit of the same along with the filing of the application that issuance of Succession Certificate under Section 372 of the Act, does not affect the maintainability of the application or of the jurisdiction of the Court to proceed to deciding the application...”

16. It is apparent that a token amount of Rs.25/- is to be paid at the time of moving application seeking letters of administration under Section 276 of the Indian Succession Act and only when the court allows that application then the petitioner is required to deposit the complete Court fees, for the actual issuance of the letter of administration. It is apparent that the petitioner is not supposed to deposit the complete fee at the time of moving the above petition seeking grant of letters of administration.

17. In view of the above facts and law, the impugned order passed by the trial court is certainly erroneous and is liable to be set aside, which has directed the petitioner to deposit the entire Court fees on the petition seeking letters of administration prior to grant and issuance of certificate to the petitioner. This appeal has merit and is liable to be allowed.

18. **Accordingly, the instant appeal is allowed.** Consequently, the impugned order dated 30.07.2024 is set aside and the petitioner's application 39-A Kha stands allowed and the petitioner is permitted to make good the deficiency of court fees after grant but before the issuance of letters of administration.

19. This court has not expressed any opinion as to the genuineness and authenticity of the Will dated 16.04.2022 executed by late Smt. Veer Bala Jain. The trial court is directed to decide the petition seeking letters of administration as a contentious case under Section 295 of the Indian Succession Act, 1925, after giving due opportunity to the opposite parties,

preferably within a period of six months from the date of production of certified copy of this order, without affording unnecessary adjournments to either of the parties, in accordance with law.

April 8, 2026
Jitendra

(Sandeep Jain,J.)