

In Re: the Goods of Late Ravinder Kumar

In Re: the Goods of Late Ravinder Kumar

SooperKanoon Citation : sooperkanoon.com/483775

Court : Allahabad

Decided On : Jul-04-2003

Reported in : AIR2004All46

Judge : S.P. Mehrotra, J.

Acts : [Constitution of India](#) - Article 225; Allahabad High Court Rules, 1952 - Rules 9 and 31; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 148 and 149; Sucession Act, 1925 - Sections 276 and 278

Appeal No. : C.M.A. No. 92267 of 2003

Appellant : In Re: the Goods of Late Ravinder Kumar

Advocate for Pet/Ap. : J. Nagar, Adv.

Judgement :

ORDER

S.P. Mehrotra, J.

1. Supplementary affidavit filed today be taken on record.
2. The present application (namely. Civil Misc. Application No. 92267 of 2003) has been filed on behalf of the petitioner Smt. Krishna Kumari. An affidavit of Kamal Kishore, sworn on 20th May, 2003, has been filed in support of the said application.

3. It appears that the petitioner -- Smt. Krishna Kumari filed Testamentary Case No. 18 of 2002, inter alia, praying for grant of Letters of Administration to the petitioner in respect of the estate of the deceased Ravinder Kumar.

4. By the order dated 16th August, 2002 passed by this Court, it was, inter alia, directed as follows :

'Let Letters of Administration be issued with Will annexed, to the applicant for the estate of late Ravinder Kumar with Will annexed, after the Registrar General gives certificate of satisfaction of payment of Court-fee under Chapter XXX, Rule 9 of the Rules of this Court.'

5. It has been averred in the aforesaid Civil Misc. Application No. 92267 of 2003 and its supporting affidavit, that the petitioner went to the office on 9th May, 2003 for payment of court-fee, and that the office refused to accept the Court-fee stating that since six months had passed, it could not accept the Court-fee.

6. It is, inter alia, prayed in the said application that direction be given to the office to accept the Court-fee and issue the Administration Certificate to the petitioner in compliance with the order dated 16th August, 2002.

7. In the supplementary affidavit filed today on behalf of the petitioner, it is averred that due to paucity of funds, the petitioner could not deposit the Court-fee in the matter, and that the delay in filing the Court fee may be condoned.

8. I have heard Sri J. Nagar, learned counsel for the petitioner.

9. It is submitted by Sri J. Nagar that even if there is any delay in payment of Court-fee, the Court has power to enlarge the period for payment of Court-fee in view of the provisions of Section 148 of the Code of Civil Procedure. It is further submitted by Sri J. Nagar that the provisions of Code of Civil Procedure save as otherwise provided in the Indian Succession Act, 1925 have been made applicable to the proceedings in relation to the grant of probate and Letters of Administration.

10. Sri J. Nagar has relied upon the following decisions :

1. Palani Gramani v. Manickammal : AIR1938 Mad486 .

2. In the Goods of Mrs. Lilian Singh; : AIR1943 Cal19 .

3. Kailash Chandra v. Nanda Kumar : AIR1944 Cal385 .

4. Ramji Sao v. Jageshwari : AIR1964 Pat272 .

5. Mst. Tribeni Kuer v. Shankar Tiwari : AIR1971 Pat391 .

11. It is further submitted by Sri J. Nagar that the petitioner has shown sufficient cause for the delay in the payment of Court-fee, and in the circumstances, the delay in payment of Court-fee may be condoned.

12. I have considered the submissions made by Sri J. Nagar, learned counsel for the petitioner.

13. Section 289 of the Indian Succession Act, 1925, which deals with grant of probate, provides as follows :

'289. Grant of probate to be under seal of Court.-- When it appears to the District Judge or District Delegate that probate of a Will should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VI.'

14. Section 290 of the said Act, which deals with grant of letters of administration, lays down as under.

'290. Grant of letters of administration to be under seal of Court.-- When it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he shall grant the same under the seal of his Court in the form set forth in Schedule VII.'

15. Section 291 of the said Act, which deals with Administration bond, provides as follows :

'291. Administration bond.-- (1) Every person to whom any grant of letters of administration, other than a grant under Section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the

due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person --

(a) the exception made by Sub-section (1) in respect of a grant under Section 241 shall not operate;

(b) the District Judge may demand a like bond from any person to whom probate is granted.'

16. Section 300 of the said Act, which provides for concurrent jurisdiction of the High Court, reads as under :

'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, authorized it so to do.'

17. Thus, Section 289 read with Section 300 of the Indian Succession Act, 1925 lays down that the High Court will grant probate of a Will under the seal of the Court in the form set forth in Schedule VI to the Indian Succession Act, 1925.

18. Section 290 read with Section 300 of the said Act provides that the High Court will grant letters of administration to the estate of the deceased, with or without a copy of the Will annexed, under the seal of the Court in the form set forth in Schedule VII to the Indian Succession Act, 1925.

19. Hence, after the order is passed by the Court directing for grant of probate or letters of administration, such grant of probate or letters of administration will be

made under the seal of the Court in the forms mentioned above.

20. It may be mentioned that the grant of probate or letters of administration made under the seal of the Court in the forms mentioned above bears the same date, as the date of the order passed by the Court directing such grant.

21. However, before such grant of probate or letters of administration under the seal of the Court in the forms mentioned above is issued to the petitioner in whose favour the Court has passed order for grant of probate or letters of administration, he is required to complete certain formalities which, inter alia, include payment of Court-fee (if any) and giving of Administration bond as provided in Section 291 read with Section 300 of the Indian Succession Act, 1925.

22. Rule 9 of Chapter XXX of the Rules of the Court, 1952 (in short '1952 Rules') provides as follows :

'9. Certificate as to court-fee.-- No order for the issue of a grant of probate or letters of administration shall be made --

(a) until after the Registrar has certified either that the Court-fee payable on the grant has been paid or that no Court-fee is payable, such certificate being made on the order-sheet in the prescribed form; and

(b) until the applicant has delivered the account referred to in Clause (b) of Rule 5 and has produced a certificate from the Controller, under Section 60 or 67 of the Estate Duty Act, 1953, that the estate duty payable in respect of the property included in the account has been or will be paid or that none is due, as the case may be.'

23. Rules 26 and 30 of Chapter XXX of the 1952 Rules provides for the giving of Administration Bond by the aforesaid person in whose favour the order has been passed for the grant of Letters of Administration.

24. These Rules are with reference to Section 291 read with Section 300 of the Indian Succession Act, 1925. Rules 26 and 30 of Chapter XXX of the 1952 Rules are quoted below :

'26. Administration bond.-- Every person to whom a grant of letters of administration, other than a grant under Section 241 of the Act, is committed, shall give a bond to and in the name of the Chief Justice with one or more sufficient sureties to be approved by the Registrar. Such bond shall in all cases be prepared in the office of the Registrar and shall unless otherwise ordered by the Court, be given in the amount of the full value of the property for which the grant is to be made less the amount of debts (if any) secured by mortgage of the estate property. The bond, unless given by a Guarantee Society, shall be in the prescribed form.

30. Attestation of bond.-- The execution of administration bond by person other than a Guarantee Society shall be attested by the Registrar or where executed outside the Court-house, by the Registrar or such gazetted officer as may be nominated by the Registrar for that purpose.'

25. Rule 31 of the 1952 Rules provides as follows :

'31. Consequence of neglect to proceed with petition or to furnish security.-- If a petitioner for a grant of probate or letters of administration, for three months from the date of admission of the petition, neglects to proceed with the petition, or for three months from the date of the order for grant neglects to give the required security or otherwise to proceed with the application, or to take out the grant, the Registrar shall give notice in writing of his default to the Administrator General, who may then apply to the Court for an order that the petition be dismissed and that he may be at liberty to apply for a grant of letters of administration.

If no further steps are taken in the matter the petition may be listed before the Court for dismissal and the Court may thereupon make such order as it thinks fit.'

26. A perusal of Rule 31 shows that it deals with two contingencies :

(i) Before the order for grant of probate or Letters of Administration is passed by the Court.

(ii) After the order for grant of probate or Letters of Administration is passed by the Court.

27. As regards contingency mentioned at (i) above, Rule 31 provides that if a petitioner for grant of probate or Letters of Administration, for three months from the date of admission of the petition, neglects to proceed with the petition, then the Registrar shall give notice in writing of his default to the Administrator General, who may then apply to the Court for an order that the petition be dismissed and that he may be at liberty to apply for a grant of Letters of Administration. It is further provided in the said Rule 31 that if no further steps are taken in the matter, then the petition may be listed before the Court for dismissal and the Court may thereupon make such order as it thinks fit.

28. As regards contingency mentioned at (ii) above, Rule 31 provides that if a petitioner for grant of probate or Letters of Administration for three months from the date of the order for grant neglects to give the required security or otherwise to proceed with the application, or to take out the grant, then the Registrar shall give notice in writing of his default to the Administrator General, who may then apply to the Court for an order that the petition be dismissed and that he may be at liberty to apply for a grant of Letters of Administration. It is further provided that if no further steps are taken in the matter, then the petition may be listed before the Court for dismissal and the Court may thereupon make such order as it thinks fit.

29. A combined reading of Rules 9, 26, 30 and 31 of the 1952 Rules shows that after an order for grant of probate or Letters of Administration is made by the Court, the petitioner has to take prompt steps for the deposit of Court fee so that within three months from the date of the order of the grant, the petitioner may be able to give the required security, proceed with the application, and take out the grant as required in Rule 31 of Chapter XXX of the 1952 Rules.

30. This conclusion will be in consonance with the requirements of Section 317 of the Indian Succession Act, 1925 read with Rule 34 of the 1952 Rules, which require the executor or administrator to exhibit inventory within six months from the grant of probate or letters of administration, and similarly, to exhibit on account of the estate within one year from the grant. The said periods may be respectively extended by the Court. Section 317 of the Indian Succession Act, 1925 and Rule 34 of the 1952 Rules are quoted below :

'317. Inventory and account.-- (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under Section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under Section 193 of that Code.'

'34. Inventory and account.-- Inventory and account to be furnished by an executor or administrator under Section 317 of the Act shall be in the prescribed form, and shall be verified in the manner following :

'I..... the executor (or administrator) named in the above inventory, do hereby declare that the said inventory is in every respect true, perfect and correct to the best of my knowledge, information and belief, and that the same contains a full, true and perfect inventory of all the property in the possession of the deceased..... at the date of his death, and of all credits owing to him, and of all debts owing by him'; or

'I..... the executor (or administrator), named in the above account, do hereby declare that the said account is true, perfect and correct to the best of my

knowledge, information and belief, and that it gives a full, true and perfect account of all the estate and effects of the deceased..... which has or have come into my hands, possession, power, control, custody or knowledge, and of the disposition of the same.'

31. Coming now to the facts of the present case, as noted above, the order for grant/issuance of Letters of Administration with will annexed was passed by the Court on 16th August, 2002, while the payment of court-fee was sought to be made by the petitioner on 20th May, 2003 along with the aforesaid application No. 92267 of 2003.

32. As held above, after an order for grant of probate or Letters of Administration is made by the Court, the petitioner has to take prompt steps for the deposit of court-fee so that within three months from the date of the order of the grant, the petitioner may be able to give the required security, proceed with the application, and take out the grant as required in Rule 31 of Chapter XXX of the 1952 Rules,

33. It is thus, evident that the payment of court fee sought to be made by the petitioner on 20th May, 2003 was beyond time.

34. Sri J. Nagar, however, submits that this Court has power under Section 148 of the Code of Civil Procedure to enlarge the period for payment of court fee. Section 268 of the Indian Succession Act provides as follows :

'268. Proceedings of District Judge's Court in relation to probate and administration.-- The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure. 1908.'

35. Thus, the provisions of Code of Civil Procedure, 1908, save as otherwise provided in the Indian Succession Act, 1925 have been made applicable to the proceedings of the Court of the District Judge in relation to the granting of probate or Letters of Administration.

36. Hence, the provisions of Section 148 of the Code of Civil Procedure are applicable to the proceedings of the Court of the District Judge in relation to the granting of probate or Letters of Administration.

37. As noted above, in view of Section 300 of the Indian Succession Act, 1925, the High Court has concurrent jurisdiction with the District Judge in the exercise of all the powers conferred upon the District Judge. Reading Sections 268 and 300 together is evident that the provisions of Code of Civil Procedure including Section 148 thereof are applicable to the proceedings for grant of probate or Letters of Administration before the High Court.

38. Hence, the High Court has powers conferred under the Code of Civil Procedure including the power conferred under Section 148 Code of Civil Procedure regarding enlargement of time while dealing with the proceedings for granting of probate or Letters of Administration.

39. The said conclusion is also supported by Section 141 Code of Civil Procedure which has been relied upon in the aforementioned decisions cited by Sri J. Nagar, learned counsel for the petitioner.

40. In Palani Gramani case (supra), it was laid down as follows (at pages 487 and 488 of the said AIR) :

'.....When a case is registered as a suit and the petition becomes a plaint, no fee is prescribed in the Rules as payable by the applicants : Letters of administration have been ordered to be issued. All that remains to be done is for the applicants to pay the appropriate court-fees computed upon the Value of the estate and, upon this being done, letters of administration will issue. It is at this stage, that the present application is made pursuant to the provisions of Order 33, Civil P.C. and Order 8, Rule 14 of the Original Side Rules.....'

'Order 8, R, 14 of the Original Side Rules deals with the machinery to be followed by the applicants. Section 141, Civil P.C. provides as follows :

The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction. I see no

reason why an application by a petitioner for grant of probate or letters of administration, which is clearly a proceeding in a Court of civil jurisdiction, cannot be subject to the provisions of Order 33, Civil P.C. nor that any of the Rules of that Order are inapplicable to such a petition. The provisions of the High Court Fees Rules, 1933, which supplant the former Rules, in my view, contemplate proceedings for the grant of probate and letters of administration being subject to the pauper Rules.....'

41. In the Goods of Mrs. Lilian Singh (supra), it was laid down as follows (at page 20 of the said AIR) :

'The present application by Provabati Devi is for stay of the proceedings in this Court till the disposal of the proceedings in the Court at Bhagalpur. This prayer is based on Section 10, Civil P.C.....'

'I am of opinion that the section applies to applications for letters of administration by reason of the provisions of Section 141, Civil P.C., which enacts that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of civil jurisdiction. The term 'all proceedings in any Court of civil jurisdiction' has been the subject of judicial interpretation and it is now well settled that it includes all proceedings relating to original matters in the nature of suits such as an application for probate or letters of administration.....'

'Section 141 runs thus :

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Its terms are wider than what is suggested by Mr. Banerjee. The section is not limited to the internal procedure regulating the conduct of the trial of a suit, but it embraces wider matters of procedure, viz., procedure provided in this Court in regard to suits. Now let us examine the provisions of Section 10. It lays down that when a suit is pending before a Court it shall not proceed with its trial if certain circumstances are present. True, the section has nothing to do with the mode in

which the trial of a suit is to be conducted but it does deal with the procedure which the Court is to follow in respect of a pending suit when the existence of certain matters is brought to its notice. In other words it deals with a question of procedure in regard to suits. That being so, by virtue of the provisions of Section 141, Section 10 is applicable to an application for letters of administration.'

42. In Kailash Chandra case (supra), it was laid down as follows (at page 386 of the said AIR) :

'.....It seems clear to us that the Court below was not right in holding that the order dismissing the previous application for revocation operated as a bar to the present application on the principle of res judicata. The order was made in the absence of both parties and nothing was heard or decided. At best the order of dismissal could be regarded as one made under Order 9, Rule 3 read with Section 141, Civil P.C. and obviously it could not bar a second proceeding. The fact that the Court expressed an opinion regarding the maintainability of the application is in our opinion quite immaterial and does not alter the character of the order that was actually made.....'

43. In Ramji Sao case (supra), it was laid down as follows (paragraphs 11 and 12 of the said AIR) :

'(11) The next point which Mr. Shambhu Nath has taken is that the provisions of the Code of Civil Procedure are not applicable to a proceeding for grant of a succession certificate, and that Order 1, Rule 10 was, therefore, not applicable in this case. On this ground, he has urged that the Court below has acted illegally in permitting Jageshwari Kuer to be added as a petitioner under Order 1, Rule 10. In my opinion, this argument must also fail. If it was illegal for Jageshwari to be added as a petitioner under Order 1, Rule 10, it was equally illegal for the appellants to be added as objectors in the proceeding under the same provisions. I may refer to Section 384 of the Act in this connection. Sub-section (3) of that section lays down :

'(3) Subject to the provisions of Sub-section (1) and to the provisions as to reference to and revision by the High Court and as to review of judgment of the

Code of Civil Procedure, 1908, as applied by. Section 141 of that Code, an order of a District Judge under this Part shall be final.'

44. The part relates to proceedings for grant of a succession certificate. Section 141 is as under :

'The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of Civil jurisdiction.'

'12. Section 384(3) of the Act appears to show that the provisions relating to reference to and revision by the High Court as well as to review of judgment as given in the Code of Civil Procedure would apply to a proceeding for grant of a succession certificate before the District Judge, and that they would apply because of the provisions of Section 141 of the Civil Procedure Code. The inference, therefore, is clear that other provisions of the Code of Civil Procedure relating to the procedure in suits will apply also to a proceeding for grant of succession certificate under the Act because it is a proceeding in a Court of civil jurisdiction.'

45. In Mst. Tribeni Kuer case (supra), it was laid down as follows (paragraphs 5 and 9 of the said AIR) :

'5. It may be stated that Section 141 of the Code of Civil Procedure lays down that 'the procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable in all proceedings in any Court of Civil Jurisdiction'. To the similar effect is the provision of law laid down in Section 268 of the Indian Succession Act which recites as follows :

'The proceedings of the Court of the District Judge in relation to the granting of probate and letters of administration shall, save as hereinafter otherwise provided, be regulated, so far as the circumstances of the case permit, by the Code of Civil Procedure, 1908.' On reading these two provisions of the law referred to above, it follows that the Code of Civil Procedure will apply to all proceedings before the District Judge in relation to the granting of probate and letters of administration so far as the circumstances of the case permit.'

'9. A reference may also be made to the case of Dintarini Dabi v. Doibo Chunder Rov. reported in (1882) ILR 8 Cal 880. In this case their Lordships have clearly observed that provisions of Section 647 of the Code of Civil Procedure, 1882 (which is equivalent to Section 141 of the Code of Civil Procedure 1908) will be followed as far as it can be made applicable in all Courts of Civil jurisdiction. In this case an ex parte decree was obtained in a probate case and the party against whom the ex parte order was passed came up before the Court and asserted that he had no notice of the proceeding. Their Lordships observed that the aggrieved party could come up before the Court for giving prima facie evidence that he had no notice of the proceeding. Learned counsel appearing for the opposite party has referred to a case of Rup Lal v. Manohar Lal, reported in AIR 1936 Lah 863 wherein it is clearly observed that provisions of Order 9, Rule 9 of the Code of Civil Procedure are applicable to probate proceedings. Considering the circumstances of the case, I am of opinion that the provisions of Order 9, Rule 13 of the Code of Civil Procedure are applicable to probate proceedings and, as such, it cannot be stated that the learned District Judge has no jurisdiction to set aside the ex parte revocation order passed in Revocation Case No. 7 of 1965.'

46. It is thus evident that the provisions of Section 148 of the Code of Civil Procedure are applicable to the present case.

47. The question, however, arises as to whether Section 148 of the Code of Civil Procedure can be resorted to for enlargement of time for payment of court-fee, as submitted by Sri J. Nagar, learned counsel for the petitioner.

48. Section 148 of the Code of Civil Procedure provides as follows :

'148. Enlargement of time.-- Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, (not exceeding thirty days in total), even though the period originally fixed or granted may have expired.'

49. A plain reading of this Section shows that it provides for enlargement of any period fixed or granted by the Court for the doing of any act prescribed or allowed by the Code of Civil Procedure. In other words, if the Court fixes or grants any

period for the doing of any act, then the Court may enlarge such period under Section 148 of the Code of Civil Procedure. However, if any period is fixed or granted by law, then the said Section 148 will evidently not apply.

50. In *Kathyee Cotton Mills Ltd. v. R. Padmanabha Pillai* : AIR1958 Ker88 , it was laid down as under (paragraph 15 of the said AIR) :

'15. We have absolutely no hesitation in accepting the contention of Mr. Subramonia Ayyar that a Court has no power under Section 148. CPC to extend a period fixed by Statute and not fixed or granted by the Court. It is not necessary for us to refer to the cases bearing on that point, because we are in entire agreement with this contention. But the question is whether the time granted for payment of court fees in this case is one granted by the Court or by the Statute. No doubt, Section 2 of the Courts Fees Act states that no document of the kinds specified in the I and II schedules of that Act shall be filed etc. in any Court of justice, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. This section only makes it obligatory on the part of the persons filing or exhibiting the documents mentioned therein to pay the necessary court fees indicated in the Act. No doubt, it stands to reason, that when such documents are produced before the Courts or other public offices they must bear the necessary court fees leviable on those documents.'

51. In the present case, time for payment of court-fees, as discussed above, is evident from the relevant Rules of Chapter XXX of the 1952 Rules, particularly Rule 31 thereof. Hence, time for payment of court-fee is fixed by law, and not by the Court. Therefore, the said period cannot be enlarged under Section 148 of the Code of Civil Procedure.

52. Thus, enlargement of time sought for by the petitioner for payment of court-fee cannot be granted under Section 148 of the Code of Civil Procedure. In fact, Section 148 of the Code of Civil Procedure is not relevant in the present case where question is regarding enlargement/extension of time for payment of court-fee. This is because, there is specific provision, namely Section 149 of the Code of Civil Procedure dealing with power of Court to permit payment of court-fee at any

stage.

53. Section 149 of the Code of Civil Procedure provides as follows :

'149. Power to make up deficiency of court-fees.-- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.'

54. Thus, the Court may allow payment of court-fee (whole or part, as the case may be) 'at any stage'. It, therefore, follows that the Court may condone the delay in payment of court-fee, and enlarge/extend the time for payment of court-fee.

55. In *Indian Statistical Institute v. Associated Builders*, AIR 1978 SC 335, their Lordships of the Supreme Court held as follows (paragraph 13 of the said AIR) :

'13. Equally when the petition is not properly stamped the Court has ample powers to extend the time for affixing proper court-fee. Section 149 of the Code of Civil Procedure confers ample power on the High Court to exercise its powers in order to do justice to a litigant where the failure is not due to any fault of the litigant. (*Mahanth Ram Das v. Ganga Das* : [1961]3SCR763 .')

56. As noted above, the provisions of Code of Civil Procedure are applicable to the proceedings for grant of probate or letters of administration under the Indian Succession Act, 1925. Evidently, the provisions of Section 149 of the Code of Civil Procedure are applicable to the proceedings for grant of probate or letters of administration. Hence, the payment of court-fee may be allowed by the Court at any stage. In case there is any delay in the payment of court-fee, the Court may condone the delay, and enlarge/ extend the time for payment of court-fee.

57. Moreover, Rule 31 of Chapter XXX of the 1952 Rules, as seen above, provides that 'if no further steps are taken in the matter the petition may be listed before the Court for dismissal and the Court may thereupon make such order as it

thinks fit.' Hence, in view of Rule 31 of the 1952 Rules also, the Court may condone the delay in payment of court-fee, and extend the time for such payment, and in consequence also time for giving the required security, proceed with the application, and take out the grant as contemplated under the said Rule 31.

58. Coming now to the facts of the present case, by the order dated 16th August, 2002, Letters of Administration has been directed to be issued with Will annexed after the Registrar General gives certificate of satisfaction of payment of court fee under Chapter XXX, Rule 9 of the 1952 Rules. As discussed above, the payment of court-fee sought to be made by the petitioner on 20th May, 2003 was beyond time.

59. I have perused the supplementary affidavit filed today on behalf of the petitioner.

60. Having considered the averments made in the said supplementary affidavit and the submissions made by Sri J. Nagar, learned counsel for the petitioner, I am satisfied that sufficient cause has been made out by the petitioner explaining the delay in the payment of court fee.

In the circumstances, I am of the opinion that the delay in payment of Court fee by the petitioner deserves to be condoned, and the same is accordingly condoned. The period for payment of court-fee is extended/ enlarged till 20th May, 2003 on which date, the petitioner along with the aforesaid application No. 92267 of 2003 submitted the court-fee. Office will now proceed with the matter.

The aforesaid application is disposed of accordingly.