

P.C. Saxena Vs. the State

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Court : Delhi

Decided On : Feb-28-1975

Reported in : [1976]104ITR106(Delhi)

Judge : B.C. Misra, J.

Acts : [Indian Succession Act, 1925](#) - Sections 372; [Estate Duty Act, 1953](#) - Sections 56(2) and 73A

Appeal No. : F.A.O. No. 92 of 1969

Appellant : P.C. Saxena

Respondent : The State

Advocate for Def. : None

Advocate for Pet/Ap. : D.D. Sharma, Adv

Judgement :

B.C. Misra, J.

1. This order will dispose of three first appeals from Orders Nos. 92, 93 and 94 of 1969, which have raised a common question of law and can be disposed of together.

2. The material facts of the case giving rise to the appeals are that one Maharaj Narain Saxena died on 28th October, 1959. On or about 10th June, 1966, the appellant before me filed three separate petitions under Section 372 of the Indian Succession Act for grant of succession certificate to realise various debts and securities mentioned in the petitions. These petitions were allowed by the subordinate judge (exercising jurisdiction) by orders dated 30th April, 1968. On the material on record, he allowed the petition and ordered the grant of succession certificate subject to the production of a certificate of clearance in respect of the estate duty of the deceased under Section 56(2) of the Estate Duty Act. It is common ground that the appellant has neither applied for nor obtained the requisite certificate. On the other hand, he has moved an application giving rise to the present appeals to the court below alleging that under Section 73A of the [Estate Duty Act, 1953](#), no proceedings can be commenced for levy of estate duty on the estate of the deceased after the expiry of five years since the death and since Maharaj Narain Saxena died on 28th October, 1959, no estate duty could be legally levied and, therefore, the petitioner be excused from complying with the order to produce the certificate of clearance in respect of the estate duty. The court below by the impugned order has rejected the applications of the appellant. Feeling aggrieved, the appellant has filed the present appeals.

3. Mr. Sharma, learned counsel for the appellant, has taken me through the relevant provisions of law. The Estate Duty Act, 34 of 1953, received the assent of the President on 6th October, 1953, and it has been enforced with effect from 15th October, 1953, vide notification No. 1882 dated 8th October, 1953. Section 56 of the Act as amended reads as follows :

'(1) In all cases in which the grant of representation is applied for-

(a) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under Section 19-I of the Court-fees Act, 1870, all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(b) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in Clause (a) and has produced a certificate from the Controller under Sub-section (2) of Section 57 or Section 67 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.

(2) In all cases in which a grant of succession certificate is applied for, a copy of the application shall be furnished by the applicant to the Controller and no order entitling the applicant to the grant of such a certificate shall be made upon his application until he has produced a certificate from the Controller under Sub-section (2) of Section 57 or Section 67 that the estate duty payable in respect of the property mentioned in the application has been or will be paid, or that none is due, as the case may be.'

4. The Act 34 of 1953 before its amendment had a corresponding section which was then numbered as 57. It contained a similar provision but its application was restricted to the grant of representation within six months of the death of the deceased and it applied to executors. It did not contain any specific provision in respect of grant of succession certificate. There was no provision corresponding to Section 73A of the Act.

5. The amendments were, however, made by the Estate Duty (Amendment) Act, 33 of 1958, which received the assent of the President on 19th September, 1958. By Section 21 of the amending Act, the, then existing sections 56 to 65 were deleted and were substituted by another set of sections commencing from 56 to 65 of the present Act. By this amending Act Section 73A as it exists now was inserted in the Act by Section 25. It is significant that in the newly enacted Section 56, the period of six months (which had been prescribed by the corresponding provision contained in Section 57 of the Act prior to the amendment) has been deleted and the provision states that in all cases in which grant of representation is applied for (sic); Sub-section (1) deals with a representation of the executor; Sub-section (2) makes a special reference to the grant of a succession certificate and requires a copy of the application to be furnished by the applicant to the Controller.

6. Section 57 of the present Act has an important bearing. It is to the effect that estate duty shall be due from the date of the death of the deceased and the Controller may at any time after the receipt of account delivered under Section 53 or Section 56, proceed to make in a summary manner a provisional assessment of the estate duty payable by the person delivering the account on the basis of the account so delivered. Sub-section (4) also provides that no appeal shall lie against a provisional assessment. Section 60 has made a provision for levy of a penalty for failure to comply with the provisions, inter alia, of Section 56. It is significant to notice that in Section 59 a provision has been made that if the Controller has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased under Section 53 or Section 56, then,.....he may at any time subject to the provision of Section 73A require the person accountable to submit an account as required under Section 53 and may proceed to assess or reassess such property as if the provisions of Section 58 applied thereto.

7. In my opinion, the provisions of Section 73A are applicable where the Controller wishes to initiate proceedings himself for levy of estate duty without any other circumstances or consideration. But the said limitation would probably not be attracted to a case where the party itself approaches the Controller or approaches the court for grant of a succession certificate. It may be emphasised that Section 56(2) of the Act does not admit of any exception and it specifies that 'in all cases in which a grant of a succession certificate is applied for ', a copy of the application shall be furnished. Section 57 further provides that after the receipt of the account delivered under Section 56 the Controller may then 'at any time' proceed to make a provisional assessment of the estate duty. The two provisions of law have been inserted at the same time by the amending Act and they must be reconciled and, in my opinion, on the construction I am accepting, they are consistent with each other. If a party can not want so obtain any representation or any succession certificate and does not move to civil court, the estate duty authorities have to govern themselves by Section 73A and other provisions of law applicable for levy of estate duty. But, should a party approach the court for grant of succession certificate and should the application be within time and otherwise in order, a mandatory duty has been cast on the party to furnish a copy of the accounts in

cases governed by Clauses (a) and (b) of Sub-section (1) and a copy of the application under sub-section (2) of Section 56 to the Controller. In either case, whether governed by Subsection (1) or Sub-section (2), the party is bound to produce a certificate from the Controller to the effect that estate duty has been or will be paid or that none is due. The civil court does not possess any jurisdiction or discretion to waive the aforesaid condition which is precedent to the grant of representation or succession certificate. So, there is no escape for a party to comply with the mandatory conditions prescribed by Section 56 of the Act. It may be noticed that while Section 7JA prescribes a time limit and the proceedings under Section 59 of the Act have specified that they are subject to the provisions of Section 73A, no such provision or expression occurs in Section 56. The limitation of six months contained in the corresponding provision in the Act prior to the amendment has been deleted and now the provision governs all cases for grant of succession certificate or representation and Section 57(1) contains the expression that the Controller may proceed to make in a summary manner a provisional assessment at any time after the receipt of information under Section 56. It is, therefore, clear that the bar imposed by Section 73A cannot be claimed by a party who seeks to obtain a succession certificate and applies to the civil court for grant of representation or succession certificate and so he is bound to fulfill the statutory conditions before obtaining the certificate without any exception.

8. Any other construction to reconcile the two provisions would lead to absurd results. The acceptance of the contention of the counsel for the appellant would mean that either the application for grant of succession certificate must be moved within a period of five years from the date of the death of the deceased (and a period of limitation would have to be imported in the provision which is not existent) and then the application will have to be dismissed as barred by time, or if there is no limitation for such an application, a party can conveniently be enabled to obtain the succession certificate by ignoring and bypassing the mandatory provisions of law to pay the estate duty by sheer laches and delay on his part for a period of five years. Either of the aforesaid results is repugnant to the clear provisions of the statute and the objects underlying them.

9. My observations about the non-application of Section 73A to voluntary payments of the estate duty by a party must necessarily be tentative because the authorities under the Estate Duty Act are not represented before me. I have, however, no doubt that, in view of the mandatory provisions of Section 56, the parties are not excused from complying with the provisions of law and furnishing a copy of the application to the Controller. It will, however, be for the Controller to deal with the said application according to law and furnish the requisite certificate. If the Controller finds that in view of Section 73A, he cannot make the assessment, it will be open to him to furnish the certificate that in the circumstances of the case no estate duty is due. This will certainly relieve the party of the obligations imposed by Section 56(2) of the Estate Duty Act and the conditions specified in the order of the court while disposing of the application for grant of certificate.

10. In the instant case, the applicant has not complied with the conditions imposed by the order of the civil court, on the fulfillment of which alone he was entitled to obtain the succession certificate. The applicant cannot be relieved from the said obligation which has been imposed in accordance with the provisions of law and the court cannot grant him a succession certificate unless and until he has furnished a copy of the application to the Controller and produced his clearance certificate in accordance with law. The impugned order of the lower court in refusing to issue the succession certificate does not suffer from any legal infirmity and does not call for interference.

11. As a result, I affirm the order and dismiss the appeal. Since there is no representation on behalf of the State, there will be no order as to costs.

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