

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1084 of 2024**

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MIHIR RAMESH BHATT & ORS.

Versus

NA

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Appearance:

MR.MIHIR THAKORE, LD. SENIOR ADVOCATE with MS DELSHAD A
KAPADIA(10238) for the Appellant(s) No. 1,2,3,4,5,6
for the Defendant(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

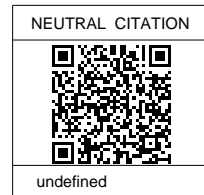
and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 01/07/2024

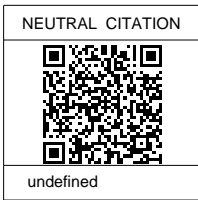
ORAL ORDER**(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)**

1. This First Appeal is filed under Section 299 of the Indian Succession Act, 1925. Challenge is to the order dated 22.08.2023 passed by the City Civil Judge, Ahmedabad, in Civil Misc. Application No.1039 of 2022. By the order so passed, the Court has been pleased to grant probate of the Will dated 01.06.2019 made by Ms.Gira Sarabhai who expired on 15.07.2021. However, the grant of probate certificate has

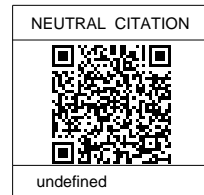


been made subject to fulfillment and compliance of the requirement and condition of surety and bond as per para 256 of Civil Manual and under Section 291 of the Indian Succession Act, 1925 and as stipulated in the City Civil Court Rules, 1921. The order is challenged only to the extent that it requires submission of bond and surety.

2. Facts in brief are that it is the case of the applicants that Gira Sarabhai executed a Will and testamime on 01.06.2009 in the presence of witnesses and the said Will was notarized. The applicants/appellants before this Court are appointed as executors of her Will for effective implementation thereof. The application therefore was filed to get probate of the Will. On the application so made by the appellants and based on the evidence so produced in support of the application, after inviting objections and

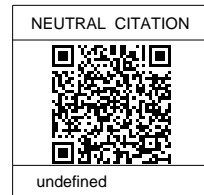


having noted that nobody had objected, the learned Judge, City Civil Court, Ahmedabad, considering the material on record, allowed the application and directed that a probate certificate be issued in the joint name of the applicants/appellants herein. However, he further directed that the grant of probate shall be subject to fulfillment and compliance of condition of surety and bond as per para 256 of Civil Manual and under Section 291 of the Indian Succession Act, 1925. On receipt of the order, the appellants filed an application Exh.15 to dispense with the requirement to submit surety. The Trial Court by an order below Exh.15 dated 06.09.2023 rejected the application on the ground that after pronouncement of the final order except for any correction relating to typographical mistake, no correction can be made and the application was therefore rejected.



3. Mr.Mihir Thakore learned Senior Advocate appearing with Ms.Delshad Kapadia learned advocate for the appellants made the following submissions:

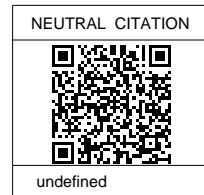
3.1 Inviting our attention to the provisions of Section 291(2) of the Indian Succession Act (for short 'the Act') he would submit that it is only in cases of letters of administration and not for issuance of probate of Will that there needs to be a provision for submission of a surety. Reading Section 291(2)(b), he would submit that even the submission of bond is also not mandatory for the grant of probate and there is a power / discretion on the Court to impose or not impose such condition. He would therefore submit that the imposition of condition for submission of surety is not justified and the order therefore suffers from non-application of mind.



3.2 Section 218 of the Indian Succession Act was read to submit that letters of administration is granted to a legal heir or legatee of the deceased in case of deceased dying intestate or has not named any executor. He would read Section 220 of the Act to submit that letters of administration entitle the administrator to all the rights to effectually administrate the properties. Provisions of Sections 232, 234 and 278 were read in context of letters of administration.

3.3 Mr.Thakore would submit that a probate can be granted to an executor appointed by a Will. A petition for grant of probate has to be filed under Section 276 of the Act.

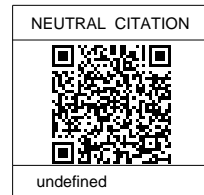
3.4 Mr.Thakore would therefore submit that there is difference between probate and letters of administration. In case of a probate, the



legator appoints a person he trusts to execute his Will whereas in the case of letters of administration a legatee or an heir is appointed by a Court. He would therefore submit that Section 291 which provides for giving of bonds and/or surety, applies only to letters of administration and not to a probate. Accordingly, the Judge has no power, in case of a probate to direct provision to grant a probate on condition that a surety be given.

3.5 Mr.Thakore would read Clause 256 of the Civil Manual and indicates that the manual provides that the Judge should always take security before granting letters of administration. There is no provision therefore for a security in case of a probate.

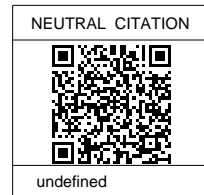
3.6 Mr.Thakore would further submit that



according to Rule 182 of the City Civil Court Rules, 1961 in all cases of letters of administration, a guarantee in the form of a bond has to be produced.

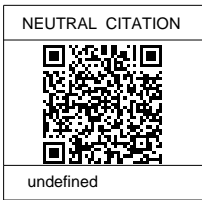
3.7 In other words therefore, Mr.Thakore would submit that reading the provisions as aforesaid, submission of surety is not at all provided for in the case of probate. The provision for submission of surety is provided for only in case of issuance of letters of administration.

3.8 Mr.Thakore would further submit that in Schedule - I of the probate petition, the value of the assets of the deceased Ms. Gira Sarabhai is quantified as Rs.20,95,71,381.91 and the liabilities at Rs.6,40,748.00. Thus, the net value of the assets of Ms.Gira Sarabhai is Rs.20,89,30,633.91. The original petitioners have



filed undertaking that they would faithfully administer the property and credits of late Ms. Gira Sarabhai. By the Will dated 01.06.2019, late Ms. Gira Sarabhai had bequeathed all her assets to Gira Sarabhai Charity Trust which is a public charitable trust.

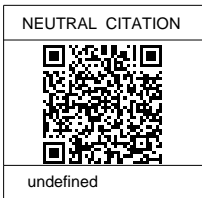
3.9 Mr.Thakore would further submit that it is to be noted that there is no contest to the Will. Affidavits of the surviving next-of-kin of late Ms. Gira Sarabhai are filed with the petition. After the publication of the public notice inviting objections to the grant of probate, no objections have been received. Moreover, the original petitioners are the executors selected and appointed by late Ms. Gira Sarabhai herself to carry out the bequests as per her Will, signifying that she had full trust and faith in them. By the Will dated 01.06.2019, late Ms. Gira Sarabhai



has bequeathed all her assets to Gira Sarabhai Charity Trust which is a public charitable trust.

3.10 Mr.Thakore would further submit that considering the high value of the assets of late Ms. Gira Sarabhai, furnishing of the surety for the amount equivalent to the value of her assets is likely to be very difficult and in the absence of such surety, the purpose of the above petition and the charitable purposes for which late Ms. Gira Sarabhai executed the Will dated 01.06.2019 and specifically appointed the appellants as executors to carry out the bequest in her Will is likely to be frustrated.

4. Having heard Mr.Mihir Thakore learned Senior Advocate it Will be in the fitness of things to reproduce the relevant provisions of Sections 218, 232, 234, 291, 227 and 248, which read as



under:

“218. *if the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh, or Jaina or an exempted person, administration may be granted to any person who, according to the rules of the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased’s estate.”*

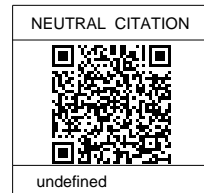
232 When -

(a) the deceased has made a will, but has not appointed an executor, or

(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the will, or

(c) the executor dies after having proved the will, but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.”

234 When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to



the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

291 *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.*

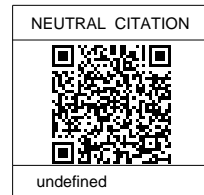
(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jain or an exempted person--

(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."

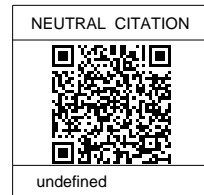
227 *Probate of a Will when granted establishes the Will from the death of the testator, and render valid all intermediate acts of the executor as such."*

248 *If an executor appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney or agent to*



take administration on his behalf, the letters of administration, with the will annexed, shall be limited accordingly.”

4.1 Reading the aforesaid provisions would indicate that there is a settled distinction between probate and letter of administration. A probate is a copy of Will certified under the seal of a Court, a competent jurisdiction with a grant of administration to the estate of testator and the legator appoints a person he trusts to execute his Will, whereas in case of letters of administration, a legatee or an heir is appointed by the Court. Reading the provision of Section 291 indicates that in relation to probate, the Court has a discretion for submission of a bond. There is no provision or power to submit a surety. Section 291 therefore provides for providing a surety only in cases of letters of administration and not in a case where probate is granted. Reading Clause 256 of the manual which reads as under:



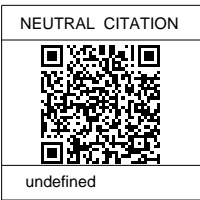
“256. The attention of all judges is invited to the provisions of section 291 of the Indian Succession Act, 1925. The Judges should always take security before granting letters of administration so that any failure to comply with the requirements of that section may not lead to unfortunate results.

In every application for the grant of limited letters of administration durante-minore aetate, the applicant should state the minor’s age. Such a statement shall be verified by an affidavit.”

4.2 Clause 256 also indicates that the words used are ‘letters of administration’ and not ‘probate’. The clause provides that the concerned Judge should always take security before granting letters of administration. Even Rule 182 of the City Civil Court Rules, 1961 provides thus:

182. Subject to the provisions of rule 183.

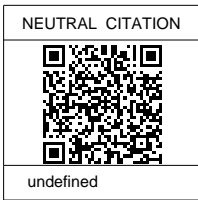
(a) In all cases of Letters of Administration, save and except under Section 241 Indian Succession Act, 1925, and may in all other cases, be required to



give a bond in Form No.72 with one surety, and the bond in each case may be given for such amount as the Court may think sufficient for the protection of the estate of the deceased.

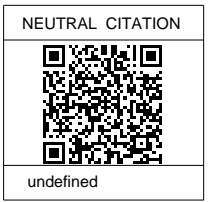
The exception made above in respect of a grant under Section 241 shall not operate when the deceased was a Hindu/Muhammedan/Buddhist/Sikh or Jain, in which case the person to whom grant is made shall give a bond in Form No.71 with one surety for such amount as the Court may think sufficient for the protection of the estate of the deceased.”

4.3 Accordingly, looking to the provisions of the the Indian Succession Act, the provision for submission of surety is provided for only in case of issuance of letters of administration and not for the issuance of probate of Will. Moreover, looking to the quantified value of the property and the undertaking filed by the appellants that they would faithfully administer the property and credits of late Ms.Gira Sarabhai and when the appellants are the executors selected and



appointed by late Ms.Gira Sarabhai which signifies that she had full trust and faith in them, the condition of providing surety by the impugned order only to the extent of it granting such probate subject to fulfillment and compliance of requirement and condition of surety and bond as per Para 256 of the Civil Manual and under Section 291 of the Indian Succession Act and as stipulated in the City Civil Court Rules, 1961, is quashed and set aside only to that extent.

4.4 In other words, the order dated 22.08.2023 passed by the City Civil Court in Civil Misc. Application No.1039 of 2022 is modified to the extent that the probate certificate shall be issued in the joint names of the appellants without the condition of providing any surety and bond.



5. Appeal is allowed accordingly with no order as to costs.

(BIREN VAISHNAV, J)

ANKIT SHAH

(NISHA M. THAKORE, J)