2025:BHC-OS:19505

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IN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION (L) NO. 6300 OF 2024
IN
TESTAMENTARY PETITION NO. 109 OF 2021

Sarwan Kumar Jhabarmal Choudhary
S/o Jhabarmal Chowdhary,
Domicile of Ecuador,
Hindu, Non Resident Indian,
Divorcee, Occupation – Business ...Petitioner

Versus

Sachin Shyamsundar Begrajka
Aged 45 years, Hindu, Indian Inhabitant
of Mumbai, Occu. Service,
R/at. B-301, Sierra Towers, Lokhandwala
Township, Kandivali (East)
Mumbai – 400 101 being the Sole
Executor and Trustee named in the
above mentioned Last will and Testament
of the Deceased ...Respondent

....

Ms. Yashvi Panchal for the petitioner.

Ms. Sonal, Rohit Gupta a/w Kinnar Shah, Ms. Aditi Bhargava, Mr. Vaibhav Singh, Mr. Shikha Jain, Mr. Saurabh Jain i/b Divya Shah Associates for the respondent.

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CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.

RESERVED ON : 12th AUGUST, 2025
PRONOUNCED ON : 16th OCTOBER, 2025
UPLOADED ON : 16th OCTOBER, 2025

JUDGMENT :- (PER M. S. KARNIK, J.)

1. Learned Single Judge of this Court (Manish Pitale, J.) invoked Rule 28(C) of the Bombay High Court (Original Side) Rules, 1980, to formulate following questions for decision by a larger bench.

> *"(I) Whether explanation (a) to (e) to Section 263 of the Indian Succession Act, 1925, are exhaustive or illustrative, in the context of "just cause" for revoking or annulling grant of Probate or Letters of Administration?*
>
> *(II) Whether circumstances not covered under explanations (a) to (e) to Section 263 of the Succession Act, 1925, can become the basis for "just cause" for the Court to revoke or annul grant of Probate or Letters of Administration?*
>
> *(III) Whether the judgments of learned Single Judges of this Court in the cases of* ***George Anthony Harris vs. Millicent Spencer [AIR 1933 Bom. 370]*** *and* ***Sharad Shankarrao Mane and etc. vs. Ashabai Shripati Mane [AIR 1997 Bom 275]****, lay down the correct position of law?*"

2. The papers were accordingly placed before the Hon'ble the Chief Justice for consideration. The Hon'ble the Chief Justice referred the questions formulated by learned Single Judge for consideration before this Division Bench.

3. The learned Single Judge was unable to agree with the position of law laid down by the learned Single Judges of this Court in *George Anthony Harris v. Millicent Spencer*[1] and *Sharad Shankarrao Mane and etc. v. Ashabai Shripati Mane*[2]. It was observed that an important question regarding the very jurisdiction of this Court in the context of Section 263 of the Indian Succession Act, 1925 (hereinafter referred to as the "Succession Act") arises, which needs to be settled authoritatively by a larger bench of this Court.

4. We have carefully perused the detailed order passed by the learned Single Judge. Before we proceed to deal with the questions referred for our consideration, it would be appropriate to appreciate the background facts leading to the reference.

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1 AIR 1933 Bom 370
2 AIR 1997 Bom 275

5. Testamentary Petition No. 109 of 2021 was filed by the respondent for the grant of Probate of a Will allegedly executed on 3rd March 2022 by deceased Rajesh Chowdhary. Rajesh Chowdhary died in Ecuador on 25th July 2020, having committed suicide. The cause of death as recorded in the death certificate is stated to be suffocation by means of hanging. On 9th December 2020, the respondent filed the testamentary petition for the grant of probate. On 20th May 2021, the petitioner filed a caveat and his affidavit in support of the caveat. The caveat was allotted lodging number 11828 of 2021. By an order dated 19th December 2022, the delay in filing the caveat and affidavit in support was condoned. On 3rd August 2023, the Prothonotary and Senior Master of this Court granted the petitioner/caveator a last chance to remove office objections within 4 weeks in respect of the caveat, so that it could be numbered, failing which the caveat was to stand rejected under Rule 986 of the Bombay High Court (Original Side) Rules, 1980.

6. The Advocate for the petitioner/caveator failed to remove the office objections, as a consequence of which, by operation of the said order, the caveat stood dismissed. On 10th November 2023, the Additional Prothonotary and Senior Master of this Court noted that caveats of some of the caveators, including that of the petitioner, stood dismissed due to non-removal of office objections, and the only remaining caveat was withdrawn. On this basis, the petition was granted, and the office was directed to issue probate.

7. On 1st January 2023, the petitioner filed Interim Application (L) No.34288 of 2023 for restoration of his caveat, but in the meanwhile, the office issued the grant. In this backdrop, the petitioner filed the present miscellaneous petition for revocation of the grant and thereupon, on 14th February 2024, the petitioner withdrew the aforesaid application for restoration of his caveat.

8. Before the learned Single Judge, counsel for the petitioner submitted as under:-

That the petitioner (original caveator) was invoking Section 263(a) of the Succession Act for revocation of the probate granted in favour of the respondent. That the deceased had died under suspicious circumstances, having committed suicide in Ecuador. That in the affidavits of the two attesting witnesses, they themselves stated that while the subject Will was signed and executed by the deceased–testator in Ecuador, the attesting witnesses had signed on the same in India. That, therefore, the grant could be said to be defective in substance. That the mandatory requirement of Section 63 of the Succession Act was not satisfied inasmuch as the attesting witnesses had not signed the Will in the presence of the testator. Therefore, the grant ought to be revoked. Although the delay in filing the caveat and affidavit in support thereof was condoned, due to default and mistake on the part of the advocate representing the petitioner (original caveator), the caveat stood dismissed due to non-removal of office objections. The petitioner ought not to suffer due to negligence, oversight and mistake of the advocate and that therefore, this Court may consider revoking the grant.

9. On the other hand, before the learned Single Judge, it was submitted by counsel appearing for the respondent that:

The grounds raised in the revocation petition are not covered in any of the explanations (a) to (e) to Section 263 of the Succession Act and, therefore, this Court cannot exercise jurisdiction to revoke the grant already issued. That explanations (a) to (e) given in Section 263 of the Succession Act are exhaustive and not illustrative in nature, thereby asserting that "just cause" for revoking or annulling the grant is necessarily required to be covered under explanations (a) to (e) to Section 263 of the Succession Act. That the ground of negligence, oversight or mistake of the advocate representing the petitioner is not covered under explanations (a) to (e) to Section 263 of the Succession Act. That the grant was issued on the basis of the affidavits of the two attesting witnesses already placed on record with the testamentary petition for grant of probate, and therefore, explanation (a) to Section 263 of the said Act cannot be invoked by the petitioner. That the caveator and/or the advocate representing the caveator were responsible for the dismissal of the caveat on the ground of non-removal of office objections, and

since the grant was already issued, there was no question of now entertaining any contentions or arguments on behalf of the petitioner in respect of the subject Will.

10. The aforesaid submissions were advanced before the learned Single Judge. Reference to the arguments before the learned Single Judge has some bearing on the questions formulated.

11. So far as this reference is concerned, Ms Yashvi Panchal, learned Advocate for the petitioner, advanced the following submissions:

(i) That, Section 263 of the Succession Act is not exhaustive, and the explanations mentioned therein are illustrations to be used as guidelines for interpreting the words "just cause" used in the section.

(ii) That the petitioner had lodged his caveat, and the delay in filing the caveat came to be condoned; however, due to negligence and oversight on the part of the advocate, the caveat was dismissed for non-

removal of office objection, and probate came to be issued.

(iii) That the grant of probate deserves to be revoked, as legitimate and serious objections could not be considered due to the dismissal of the caveat, which was based on the non-removal of office objection. Additionally, certain aspects of the matter necessitate a trial, and it is argued that the grant is substantively defective.

12. Learned Advocate for the petitioner has placed reliance on the following judgments in support :-

(i) *Annoda Prosad Chatterjee v. Kali Krishna,* (1897) ILR 24 Cal 95.
(ii) *Bal Gangadhar Tilak v. Sankarbai*, ILR 26 Bom 792.
(iii) *Subroya Chetty v. Ragammall*, ILR 28 Mad 161.
(iv) *Gaur Chandra Das v. Sarat Sundari Das* , 1913 ILR 40 Cal 50.
(v) *Surendra Nath Pramanik v. Amrita Lal Pal*, (1919) I.L.R. 47 Cal. 115.
(vi) *Mohammad Renu Mia v. Sabida Khaton*, 1918 SCC OnLine Cal 120.
(vii) *Srish Chandra Chaudhary v. Bhaba Tarini Devi*, AIR 1928 Cal 695.
(viii) *George Anthony Harris v. Millicent Spencer*, AIR 1933 Bom 370.
(ix) *Gulam Ali v. Rahmutullah Khan*, AIR 1941 Rang 259.
(x) *T Arumuga Mudaliar*, AIR 1955 Mad 622.

(xi) *Promode Kumar Roy v. Sephalika Dutta*, AIR 1957 Cal. 631.

(xii) *Southern Bank Ltd. v. Kesarbeg Ganeriwalla & Ors.*, AIR 1957 Cal 377.

(xiii) *In re Sureman Singh & another*, AIR 1969 Pat 183.

(xiv) *Rajkishore Panda & Anr. v. Haribabu Mahala & Ors.*, AIR 1973 Ori 81

(xv) *Rajeshwari Devi v. Harilal*, AIR 1978 MP 201.

(xvi) *R. Sivagnanam v. Sadananda Mudliyar*, AIR 1978 Mad 265.

(xvii) *G. Shanmugham Chetti v. Chinnammal*, AIR 1978 Mad 304.

(xviii) *S. Govindaraj v. K. R. Ramamani*, 1991-2 LW 380.

(xix) *Gita alias Gita Ravi v. Mary Janet James*, 1995-2 LW 831.

(xx) *N. Saroja v. Sri Vidya Chits & Finance,* (P) Ltd. (1996-2 MLJ 74.

(xxi) *Sharad Shankarrao Mane v. Ashabai Shripati Mane*, AIR 1997 Bom 275.

(xxii) *Cheryl Margurite Sogee v. Lt. Co. Richard Charles Measse*, ILR 1997 Kar 742.

(xxiii) *In re: In the Goods of Sisir Kumar Mitra*, AIR 2010 Cal 27.

(xxiv) *Moonga Devi v. Radha Ballabh*, AIR 1972 SC 471.

(xxv) *Sundaram Pillai v. Pattabiram*, 1985 1 SCC 591.

(xxvi) *George Anthony Harris v. Millicent Spencer*, 1932 SCC OnLine Bom 156.

13. *Per Contra*, Ms Sonal, learned Advocate for the respondent, made the following submissions:-

(i) That the statement of object and reasons of said Bill No.4 of 1923, which was passed as the Act, states that the object of the bill is to consolidate the Indian law relating to succession as the separate existence on the statute book of a number of large and important enactments rendered the law difficult to ascertain, the bill had been preferred by the Statute Law Revision Committee as a purely consolidating measure and no intentional change of law had been made.

(ii) That it is a trite law that the intention of the legislature is evident from the language of the section, and hence, literal interpretation is the golden rule of interpretation.

(iii) That a perusal of Section 263 shows that the grant of probate or letter of administration may be revoked or annulled for 'just cause'. The explanations to the section state that 'just cause' shall be 'deemed to exist' where the situation and contingencies mentioned in clauses (a) to (e) thereof are shown to exist, followed by eight illustrations.

(iv) That an explanation is an integral part of the section. Though 'just cause' has not been defined in the first part of the section, it has been defined in the explanation.

(v) That the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt and ambiguity in it, yet even though the provision in question has been called an explanation, it must be construed according to its plain language and not on any a priori considerations.

(vi) That the meaning to be attached to the word 'deemed' must depend upon the context in which it is used, and it is well settled that the interpretation of a statute depends on text and context. In the context of section 263 of the Act, the word 'deemed' means 'regarded as being' or 'shall be taken to be'. The expression 'shall be deemed to exist where' means 'shall be regarded to exist where' or 'shall be taken to exist where' or simply 'is'. Thus, there is no change from the position of law as contained in the Succession Act, 1865 and the Probate and Administration Act,1881.

(vii) That the ground mentioned in section 263 cannot be held to be illustrative, as such a view would open the floodgates for people to take a second chance at causing hindrance to the grant of Probate and Letter of Administration and distribution of the estate of the deceased and would also enable

mischievous litigants to file an application under section 263 on frivolous grounds, which would lead to the delay in the administration of the estate of the deceased, which is against public policy.

(viii) That a consolidating statute is not intended to alter existing law. The statement of objects and reasons for Bill No. 4 of 1923, which was eventually enacted as the Act, specifically states this intention. Schedule V of Bill No. 4 of 1923 includes a table that outlines the sections proposed for repeal. This table indicates that section 263 corresponds to section 234 of the Indian Succession Act of 1865 and section 50 of the Probate and Administration Act of 1889.

(ix) That the change in the language of the explanation from 'just cause is' to 'just cause shall be deemed to exist where' is only a change in language and not a change in meaning. Thus, the interpretation of section 50 of the Probate and Administration Act, 1881, as amended in 1889 and section 234 of the Indian Succession Act, 1865, applies to the interpretation of section 263.

14. Learned Advocate for the respondent has placed reliance on the following judgments in support.

i. *Lynette Fernandes v. Gertie Mathias*, 2018 1 SCC 271.

ii. *Anil Behari Ghosh v. Latika Bala Dassi*, AIR 1955 SC 566.

iii. *Bal Gangadhar Tilak v. Sakwarbai alias Taj Maharaj & Ors.*, ILR 1902 26 Bom 792.

iv. *Sharad Shankarrao Mane v. Ashabai Shripati Mane*, AIR 1996 Bom 422.

v. *George Anthony Harris v. Millicent Spencer*, AIR 1932 Bom 156.

vi. *Kali Krishna Chatterjee v. Annoda Prosad Chatterjee*, 1896 ILR 24 Cal 95.

vii. *Promode Kumar Roy v. Sephalika Dutta*, AIR 1957 Cal. 631.

viii. *Hara Coomar Sircar v. Doorgamoni Dasi*, 1893 ILR 25 Cal 195.

ix. *Southern Bank Ltd v. Kesardeg Ganeriwalla*, 1957 SCC OnLine Cal 146.

x. *Mohan Dass v. Lutchman Dass*, 1881 ILR 11 Cal 11.

xi. *In re Sureman Singh & another*, AIR 1968 Pat 47.

xii. *Bablu Mandal v. Vandana Bhowmik*, 2008 1 MPLJ 522.

xiii. *P. H. Alphonso v. C.F. Coasta,* AIR 1964 Ksant 187.

xiv. *K.N. Srinivas v. C. Krishna Iyenger*, AIR 1957 Kant 74.

xv. *Pradeep Kumar Chatterjee v. Shibarata Chatterjee*, 2003 SCC Online Jhar 643.

xvi. *Subroya Chetty v. Ragammall,* 1904 ILR 28 Mad 161.

xvii. *The estate Good and effects of T. Velu Mudaliar c. Arumugla Mudaliar*, AIR 1955 Mad 622.

xviii. *Gita alias Gita Ravi v. Mary Janet James*, 1995-2 LW 831.

xix. *Dattatraya Govind Mahajan v. State of Maharashtra*, 1977 2 SCC 548.

xx. *Aphaki Pharmaceuticals v. State of Maharashtra*, 1989 4 SCC 378.

xxi. *Govt. of Andra Pradesh v. Corporation Bank*, 2007 9 SCC 55.

xxii. *Consolidated Coffee Ltd. v. Coffee Board*, 1980 3 SCC 358.

xxiii. *The State of Karnataka v. Shri Ranganatha Reddy*, 1977 4 SCC 471.

xxiv. *Barclays Bank Ltd. v. Inland Revenue Commissioner*, 1996 2 ALL ER 817.

xxv. *Beswick v. Beswick*, 1968 AC 58.

xxvi. *Southern Petrochemical Industries Co. Ltd v. Electricity Inspector & Etio*, 2007 5 SCC 447.

xxvii. *PIBCO v. CCE*, 1988 35 ELT 130.

xxviii. *Moonga Devi & Ors v. Radha Ballabh*, 1973 2 SCC 112.

15. Heard learned counsel at length. Before we proceed to consider the rival submissions, let us examine the relevant

statutory provisions. Chapter III of the Indian Succession Act, 1925 contains provisions regarding alteration and revocation of grants. Revocation or annulment of grant of probate or letters of administration for "just cause" is provided in Section 263 of the Succession Act. One of the questions before us is whether explanations (a) to (e) to Section 263 of the Succession Act, are exhaustive or illustrative, in the context of "just cause" for revoking or annulling a grant of Probate or Letters of Administration. To decide this question, it is imperative for us to appreciate the phraseology of the explanation appended to Section 263 of the Succession Act and to further draw a comparison of the same with the provisions for revoking or annulling grant of Probate or Letters of Administration under the law governing this aspect prior to the coming into force of the Succession Act, more specifically, Section 234 of the Indian Succession Act, 1865 and Section 50 of the Probate and Administration Act, 1881. For ready reference, these Sections are reproduced as under :-

A. **Section 263, Indian Succession Act, 1925:**

"*263. Revocation or annulment for just cause - The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation-Just cause shall be deemed to exist where-

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances, or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) *The Court by which the grant was made had no jurisdiction.*

(ii) *The grant was made without citing parties who ought to have been cited.*

(iii) *The Will of which probate was obtained was forged or revoked.*

(iv) *A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.*

(v) *A has taken administration to the estate of Bas if he had died intestate, but a Will has since been discovered.*

(vi) *Since probate was granted, a latter Will has been discovered.*

(vii) *Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.*

(viii) *The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.*"

B. **Section 234, Indian Succession Act, 1865:**

"*234. Revocation or annulment for just cause, of grant of probate or administration- The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation. Just cause is- 1st, that the proceedings to obtain the grant were defective in substance; 2nd, that the grant or by concealing from the Court something material to the case; 3rd, that was obtained fraudulently by making a false suggestion, the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently: 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a) *The Court by which the grant was made had no jurisdiction.*

(b) *The grant was made without citing parties who ought to have been cited.*

(c) *The Will of which probate was obtained was forged or revoked.*

(d) *A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.*

(e) *A has taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.*

(f) *Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.*

(g) *The person to whom probate was or letters of administration were granted has subsequently become of unsound mind.*"

C. **Section 50 of the Probate and Administration Act, 1881:**

"*50. Revocation or annulment for just cause- The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation. "Just cause" is-
1st, that the proceedings to obtain the grant were defective in substance;
2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;
3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;
4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a) *The Court by which the grant was made had no jurisdiction.*

(b) *The grant was made without citing parties who ought to have been cited.*

(c) *The will of which probate was obtained was forged or revoked.*

(d) *A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.*

(e) *A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.*
(f) *Since probate was granted, a later will has been discovered.*
(g) *Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.*
(h) *The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.*"

16. A plain reading of Section 263 indicates that revocation or annulment of a grant is permissible for a "just cause". Explanation to Section 263 ordains when a "just cause" shall be deemed to exist. Clauses (a) to (e) thereunder provide circumstances when a "just cause" shall be deemed to exist. The illustrations under Section 263 further indicates as to the situations under which the probate or letters of administration will be revoked or annulled. The answer to this reference turns on the interpretation of the term "just cause" appearing in Section 263 of the Succession Act in the context of the explanation.

17. We have perused Section 50 of the Probate and Administrations Act. It is evident that there has been a departure

in the phraseology used in Section 263 of the Succession Act. Section 263 uses the expression "just cause shall be deemed to exist" whilst the erstwhile provision (section 50) used the expression ""just cause" is'.

18. To determine the legislative intent behind such a change in the terminology employed in the 'Explanation' in Section 263, a reference will have to be made to precedents that determined the position of law in this regard prior to the enactment of the Succession Act.

19. In ***Bal Gangadhar Tilak v. Sakwarbai & Ors.***[3], a Division Bench of this Court, whilst deciding the nature of the 'Explanation' clause appended to Section 50 of the Probate and Administration Act, 1861, held the said clause to be exhaustive in nature. A similar view was taken by a Division Bench of the Calcutta High Court in ***Kali Krishna Chatterjee v. Annoda Prosad Chatterjee***[4] pertaining to Section 50 of the Probate and Administration Act, 1861. What had led to the conflict as to the

3 ILR (1902) 26 Bom 792.
4 (1896) ILR 24 Cal. 95.

interpretation of Section 263 of the Succession Act are the judgments rendered by learned Single Judges of this Court in *George Antony Harris (supra)* and Sharad Shankarrao Mane (supra), propounding that the 'Explanation' clause to the said Section is exhaustive in nature. In our humble opinion, the same was without discussing the notable deviation in the phraseology of Section 263 from the wording of the former provisions of law dealing with the subject.

20. The moot point that needs to be addressed is the scope and ambit of the words "just cause" that have been used in the Explanation clause appended to the said Sections in case of the Acts of 1881, 1886 and the Succession Act, 1925. At this stage, it would be pertinent to allude to certain relevant principles of statutory interpretation from which we seek guidance.

21. This Court in Narayan s/o Gujabrao Bhoyar Vs. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Maryadit, Yeotmal & Anr. (in Writ Petition No. 1744 of 2009) decided on

25th September 2009 in paragraph 11 made the following observations, which read thus :-

> *"11. While keeping in mind the object of the Act, the legislative intent and legislative history, it would have to be seen that the rule of fair and rational interpretation is applied. According to Blackstone, the most fair and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are "either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law". This principle was also referred by the Supreme Court in the case of Atmaram Mittal v. Ishwar Singh Punia, AIR 1988 SC 203. Lord Watson dealing with the expression "intention of the Legislature" said that it was a "slippery phrase" and said:*
>
> > *"In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication".*

22. Basically, interpretation is the process of discovering, from permissible data, the meaning or intention of the testator as expressed in his will. If interpretation discloses a clear and full intention on the part of the testator, further inquiry is not necessary. On the other hand, courts resort to the process of construction if the discovered intention is partial or ambiguous

and therefore inconclusive. In pursuing this process, a court is aided by certain rules of construction or presumptions. In applying these rules, the court is seeking to assign intention to the words used by the testator, and is not seeking the testator's actual intention, for it has already failed to find this. In essence, the court is attempting to formulate a permissible intent for the testator with the aid of rules of construction.[5]

23. An illustration to a statutory provision "merely illustrates a principle, and what the court should try and do is to deduce the principle which underlines the illustrations"[6]. They are parts of a section that help to elucidate the principle of the section.[7] They provide a "better clue to the meaning sought to be conveyed by the language of the section than the setting in which the section appears in the Act or the headings that the sections, parts or chapters carry"[8]. Illustrations are only aids to understanding the real scope of an enactment, beyond which they cannot extend or limit the scope of the text[9].

5 Washington and Lee Law Review (Vol.XX)
6 N.S. Bindra, Interpretation of Statutes (13th Edn. LexisNexis).
7 Mahesh Chand Sharma v. Raj Kumari Sharma, (1996) 8 SCC 128, 145, para 19.
8 Amar Singh v. Chhaju Singh, 1972 SCC OnLine P&H 46 at para 31.
9 N.S. Bindra, Interpretation of Statutes (13th Edn., LexisNexis).

24. What is the purpose of the Explanation clause. Explanation clause is an internal aid of interpretation of statutes. The purpose of an Explanation clause, as the term itself suggests, is merely to explain the applicability of the Section to which it is appended. It is trite law that an Explanation clause neither expands nor restricts the meaning of a Section.

25. In ***Kirloskar Ferrous Industries Ltd. & Anr. v. Union of India & Ors.***[10], Their Lordships have elucidated the scope of the Explanation clauses to a Section. It has been held that the Explanation must be read harmoniously with the main Section to clear any ambiguity caused, further stating that an explanation neither expands nor narrows down the scope of the main provision; explanation is meant to explain the main provision, not vice versa. Paragraph 66 of the said judgment is significant which reads thus :-

> *"66. What can be discerned from the above is that an explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.*

10 (2025) 1 SCC 695.

An explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section. The purpose of an explanation is, however, not to limit the scope of the main provision. The construction of the explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An "explanation" must be interpreted according to its own tenor. Sometimes an explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus, an explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain. The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa. Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision."

(emphasis supplied by us)

26. In ***Md. Firoz Ahmad Khalid v. State of Manipur & Ors.***[11], Their Lordships, while deciding the import of the Explanation clause to Section 14(1)(b) of the Wakf Act, 1995, observed the

11 2025 SCC OnLine SC 875.

function of an Explanation clause to be clarificatory in nature and further enunciated the principles to be considered while interpreting any provision of a statute that has explanations and provisos appended to it. We find it profitable to extensively quote the relevant paragraphs, which will help us answer the questions formulated. The significant portion reads thus :-

> *"10. To interpret a legislative provision, what must be primarily considered is its substantive part. An explanation simply performs a clarifying function. In other words, the substantive part of a provision cannot be understood solely from the point of view of an explanation.*
>
> *14. The object of any provision must be seen in light of the provisions surrounding it, which includes the proviso(s) and the explanation(s) appended to it. When a right accrues to a person pursuant to a position that they hold, it ultimately becomes a qualification. Once such qualification ceases to exist, that person would not be eligible to hold any other post based on his earlier position, unless the statute categorically facilitates the same. An explanation, which is simply in the nature of a clarification as regards certain categories, cannot be read in a manner which is violative of the substantive part of the provision. Although normally, a proviso cannot be used to understand the substantive part of the provision, there is no absolute bar in doing so, particularly in cases where the statute is peculiar and the proviso does not create any exception. For the aforementioned purpose, an explanation can also be understood through the proviso. In other words, if a proviso or an explanation, as the case may be, is phrased in a manner which throws more light on the objective behind the substantive part of the provision, there would be no*

difficulty in appreciating the same. Ultimately, a proviso or an explanation may be used for several purposes. Therefore, what is required is that Courts appreciate the context of such usage before rendering an interpretation to a provision vis-a-vis the proviso or explanation contained therein."

Dattatraya Govind Mahajan v. State of Maharashtra, (1977) 2 SCC 548

"9. …It is true that the orthodox function of an explanation is to explain the meaning and effect of the main provision to which it is an explanation and to clear up any doubt or ambiguity in it. But ultimately it is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention. It must be remembered that the legislature has different ways of expressing itself and in the last analysis the words used by the legislature alone are the true repository of the intent of the legislature and they must be construed having regard to the context and setting in which they occur. Therefore, even though the provision in question has been called an Explanation, we must construe it according to its plain language and not on any a priori considerations…."

(emphasis supplied)

S. Sundaram Pillai v. Pattabiraman, (1985) 1 SCC 591

"46. …It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision. Sarathi in Interpretation of Statutes while dwelling on the various aspects of an Explanation observes as follows:

(a) The object of an Explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute. (p. 329)

47. Swarup in Legislation and Interpretation very aptly sums up the scope and effect of an Explanation thus:

> *"Sometimes an Explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an Explanation is to make plain or elucidate what is enacted in the substantive provision and not to add or subtract from it. Thus an Explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain.... The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa." (pp. 297-98)*

48. Bindra in Interpretation of Statutes (5th Edn.) at p. 67 states thus:

> *"An Explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an Explanation only explains and does not expand or add to the scope of the original section... The purpose of an Explanation is, however, not to limit the scope of the main provision.... The construction of the Explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An 'Explanation' must be interpreted according to its own tenor."*

49. The principles laid down by the aforesaid authors are fully supported by various authorities of this Court. To quote only a few, in Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. CTO [(1961) 1 SCR 902 : AIR 1961 SC 315 : (1960) 11 STC 764] a Constitution Bench decision, Hidayatullah, J. speaking for the Court, observed thus:

> *"Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain clause (1) (fl) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles."*

50. In Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar [(1967) 1 SCR 848 : AIR 1967 SC 389 : 37 Comp Cas 98] this Court observed thus:

> *"The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."*

51. In Hiralal Rattanlal case [(1973) 1 SCC 216 : 1973 SCC (Tax) 307] this Court observed thus: [SCC para 25, p. 225: SCC (Tax) p. 316]

> *"On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation."*

53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is—

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation Dattatraya Govind Mahajan v. State of Maharashtra, (1977) 2 SCC 548

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>
> *(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,*
>
> *(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and*
>
> *(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."""*
>
> *(emphasis supplied)*

Government of Andhra Pradesh v. Corporation Bank, (2007) 9 SCC 55

> *"12. In construing a statutory provision, the first and foremost rule of construction is the literal construction. If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction. The other rules of construction are invoked when the*

legislative intent is not clear. In Bihta Co-op. Development and Cane Marketing Union Ltd. v. Bank of Bihar [AIR 1967 SC 389] this Court was called upon to consider Explanation to Section 48(1) of the Bihar and Orissa Cooperative Societies Act, 1935. This Court observed that the Court should not go only by the label. The Court observed that an explanation must be read ordinarily to clear up any ambiguity in the main section and it cannot be construed to widen the ambit of the section. However, if on a true reading of an Explanation it appears to the Court in a given case that the effect of the Explanation is to widen the scope of the main section then effect must be given to the legislative intent. It was held that in all such cases the Court has to find out the true intention of the legislature. Therefore, there is no Single yardstick to decide whether an Explanation is enacted to clarify the ambiguity or whether it is enacted to widen the scope of the main section…."

(emphasis supplied)

27. In case of ambiguity in interpreting a certain provision, the Courts have followed the principle of purposive construction, which is to give such an interpretation of the ambiguous provision as to uphold its true purpose. The purpose of a certain provision can be determined by ascertaining the intent of the legislature behind the use of words in a certain Section, as well as the legislative history of the provision.

28. In *Md. Firoz Ahmad Khalid* (supra), Their Lordships referred to the precedents in ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla***[12] and in ***Grid Corporation of Orissa Ltd. v. Eastern Metals & Ferro Alloys***[13], which discuss the principle of purposive construction elaborately. The relevant paragraphs which are of importance read thus :-

> *"31. …The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:*
>
> *Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language." [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]*
>
> *32. Of the aforesaid three components, namely, language, purpose and discretion "of the court", insofar as purposive component is concerned, this is the ratio juris, the purpose*

12 (2016) 3 SCC 619.
13 (2011) 11 SCC 334.

at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.

33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well."

(emphasis supplied)

Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys, (2011) 11 SCC 334

"25. …The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the

object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction…."

(emphasis supplied)

29. Considering the legislative history of Section 263 of the Succession Act, according to us, comparing the wordings of the earlier provisions that provided for revocation of probate, is an indication that 'just cause' in the Explanation to Section 263 would be deemed to exist in cases covered by (a) to (e) of the said Explanation clause, leaving it open for the Courts to determine the existence of 'just cause' in other cases after appreciating the facts of each case.

30. In our considered opinion and keeping in mind the principles of statutory interpretation discussed above, the words "deemed to be just cause" in the Explanation clause has carved out cases where 'just cause' has to be assumed to exist. Thus, in all other cases which do not fall within (a) to (e) of the Explanation, the Courts would have to, depending on the facts and circumstances of each case, determine whether 'just cause' is

made out. The Explanation clause providing a deeming fiction applies to the circumstances where a case is made out in clauses (a) to (e). There may be myraid situations where a 'just cause' exists. The jurisdiction of the Court to determine whether a 'just cause' exists in a given fact situation cannot be stifled by giving a restrictive meaning to 'just cause' in Section 263. This interpretation, in our opinion, upholds the legislative intent behind the use of words "deemed to be just cause" thereby harmonising the Explanation clause with the main Section.

31. As noted from the decisions rendered hereinbefore, the Explanation clause merely clarifies the meaning of the main Section. It can neither be interpreted to widen nor narrow down the scope of the main provision. In this case, the Explanation clause serves the sole purpose of specifying cases when just cause can be assumed to exist. The expression 'just cause' cannot be construed in a manner that would restrict the scope of Section 263 to only those specific cases provided by the Explanation clause.

32. The purpose of Section 263 is to preserve the integrity of probate proceedings and to ensure that grants are not obtained by fraud, concealment, or procedural unfairness. If the interpretation were to be restrictive, it would result in injustice by allowing a fraudulent or defective probate to stand merely because the facts of the case do not neatly fall within one of the five enumerated clauses. Such an interpretation would defeat the very object of the law, which is to provide the court with the flexibility to revoke probate whenever circumstances reveal existence of a 'just cause'.

33. There are Judicial opinions favouring this view. The Madras High Court and other High Courts have held that the term "just cause" is wide enough to include cases of gross negligence, suppression of material facts, or violation of natural justice, even if these are not expressly mentioned in the Explanation clause to Section 263. *George Anthony Harris v. Millicent Spencer* (supra), which adopted a restrictive approach, was based on the language of the earlier Acts of 1865 and 1881.

34. Clause (a) of the Explanation stipulates that if the proceedings to obtain the grant of probate is defective in substance, it will be deemed to be a 'just cause'. The existence of a 'just cause' is *sine qua non* for exercising jurisdiction under Section 263 of the Succession Act. Let us look at the issue this way. For example, in a proceeding for grant of probate, for any reason whatsoever, the respondent fails to appear or does not defend the proceedings effectively and this results in grant of probate. The aggrieved person places an record circumstances which constitute 'just clause' for revocation or annulment of a probate in a proceeding under Section 263. Merely because the aggrieved person has not appeared or defended his case in the proceeding for grant of probate, can it be a reason for refusing to exercise jurisdiction under Section 263. We think not. The Legislature, in its wisdom has carved out an independent safeguard in the form of Section 263 for obvious reasons to protect those who are able to establish the existence of circumstances which constitute a 'just cause' for annulment or revocation of probate. Such is the width and amplitude of Section 263, which has to be construed accordingly.

35. In the present facts, it is not the absence of the advocate or the failure on the part of the Caveator to defend the grant of probate which constitutes a reason for invoking Section 263. The Caveator says that the following circumstances amongst others viz.:

(i) That the deceased had died under suspicious circumstances, having committed suicide in Ecuador; and

(ii) That the affidavits of the two attesting witnesses themselves stated that while the subject Will was signed and executed by the deceased- testator in Ecuador, the attesting witnesses had signed on the same in India when the subject Will, bearing only the signature of the deceased testator, was sent from Ecuador to India which according to the petitioner defeats the mandatory requirement of Section 63 of the Succession Act which requires the attesting witnesses to sign the Will in the presence of the testator. This according to the petitioner constitutes a 'just cause' within the meaning of Section 263. There may be legitimate and serious objections which could not be considered due to dismissal of the caveat. It may be possible that the aggrieved person is in a

position to satisfy the necessity of a trial if grounds exist that the grant is defective in substance. Ultimately, it is for the Court to determine in the facts and circumstances of each case what circumstances would constitute a 'just cause'.

36. The reasoning of learned Single Judge (Manish Pitale, J.) appeals to us as the correct view. We are in respectful agreement with His Lordship's observations that the wording of Section 263 reflects an intention to allow wider judicial discretion. His Lordships view that the explanations are illustrative and not exhaustive preserves the dynamic character of the provision, ensuring that it continues to meet the demands of justice in varied factual circumstances appears to be in tune with the legislation intent. To interpret the explanations narrowly would be to frustrate the legislative intent.

37. The statutory provision is the source of power, while the explanations merely indicate situations where that power may be exercised. Therefore, in case of any conflict, the main provision must prevail over its explanations/illustrations. The term "just

cause" must receive a liberal interpretation so that the court may revoke a grant of probate whenever fairness, equity, and justice so require. The Explanation clause to Section 263 is thus held to be illustrative and not exhaustive.

38. We, therefore, answer the reference in the following term:-

(A) The Explanations (a) to (e) to Section 263 of the Indian Succession Act, 1925 are illustrative, in the context of 'just cause' for revoking or annulling grant of Probate or Letters of Administration.

(B) The circumstances not covered under explanations (a) to (e) to Section 263 of the Indian Succession Act, 1925, can become the basis for "just cause" for the Court to revoke or annul grant of Probate or Letters of Administration.

(C) The judgments of learned Single Judges of this Court in *George Anthony Harris Vs. Millicent Spencer, AIR (1933) Bom. 370* and *Sharad Shankarrao Mane and etc. Vs. Ashabai Shripati Mane, AIR (1997) Bom. 275* do not lay

down the correct position of law in the context of Section 263 of the Succession Act. Resultantly, we uphold the view of the learned Single Judge (Manish Pitale, J.) from which order the present reference arises.

39. The matter be now placed before the learned Single Judge.

(N.R. Borkar, J.) (M.S. Karnik, J.)