

A ASHOK SINGH
v.
ASSISTANT CONTROLLER OF ESTATE DUTY,
CALCUTTA AND OTHERS.

B MAY 12, 1992

[S. MOHAN AND G.N. RAY, JJ.]

Estate Duty Act, 1953:

C Sections 53-A, 56(2), 58, 59 and 73A—Estate Duty—Levy of—Proceedings not commenced within five years from the death of estate owner—Application for grant of succession certificate made by the deceased's son after attaining majority—Whether proceedings debarred—Whether succession certificate could be denied on ground of non-production of certificate from
D Controller—"Proceedings for the levy of any duty"—Whether includes proceedings for assessment.

Interpretation of Statues—Plain meaning to be given effect to.

E *Words and Phrases—Word 'levy'—Meaning of.*

Legal Maxims—Quai Haeret in Litera Haeret in Cortice.

F The appellant's father died intestate leaving behind the appellant and his brother. Since they were minors at that time their maternal uncle was appointed as guardian by the City Civil Court. The guardian never filed the account of the property or the return as required under Sections 53 or 56 of the Estate Duty Act, 1953 in respect of the estate of the appellant's father within five years from the date of his death.

G On attaining majority, the appellant as Karta, applied to the City Civil Court for the grant of a succession certificate in respect of the estate of his father. However, during the proceedings, it was pointed out that a certificate from Estate Duty Authority was necessary under Section 56(2) of the Act.

H On behalf of the appellant it was urged that in view of Section 73A of the Act, the time to commence any proceedings for levy of estate duty

had become barred inasmuch as five years had expired from the date of the death of his father. Hence, the question of production of certificate under Section 56(2) did not arise. A

The Chief Judge of the City Civil Court held that he could not go into this question since the authorities constituted under the Act alone could decide this. B

Thereafter, the appellant filed the return with the Assistant Controller of Estate Duty. The appellant was served with a notice under Section 58(2), along with a questionnaire with the first respondent—the Assistant Controller of Estate Duty. Despite the appellant's objection that no proceedings could be initiated in view of the statutory bar under Section 73A, inasmuch as the period of five years had expired from the date of his father's death, the appellant was called upon to furnish certain particulars. Under these circumstances the appellant challenged before the High Court the notice issued under Section 58(2) of the Act, along with the questionnaire and the proceedings. A Single Judge cancelled the notice in question. C D

On appeal by the first respondent, the Division Bench held that Section 73A did not do away with the liability of an accountable person for payment of duty; it only barred the initiation of proceedings for levy of duty. Therefore, if the liability remained but proceedings could not be initiated, there was no question of full payment of duty. As such it could not be stated in the certificate by the Controller that there was no claim of estate duty from accountable person; and, accordingly, the bar of limitation was not applicable to cases as provided under Section 73A where application was made for grant of representation or succession certificate and the account or the copy application was delivered to the Controller as required under Section 56. E F

In the appeal before this Court, on behalf of the appellant it was contended that the construction placed by the Division Bench was totally incorrect; Section 73A was comprehensive in its scope in so far it threw a statutory bar preventing the authority from commencing any proceeding after the expiry of five years; and would take within it Section 56 also; that the High Court was not correct in its view that no grant of representation of succession certificate could be made after the expiry of five years; that Section 56 would have to be so read as to bring about a harmonious G H

A construction between Section 73A and Section 56; and that strict literal interpretation would defeat the object and purpose of the statutory bar under Section 73A.

Allowing the appeal, this Court,

B HELD : 1.1 The language of Section 73A of the Estate Duty Act, 1953 is unambiguous. This section throws a statutory bar and is comprehensive in nature. In so far as it says "no proceeding under this Act", that means any proceedings whatever in relation to levy can ever be commenced after five years. The word "levy" used in Section 73A embraces within it the process of assessment and also the imposition of tax. Therefore, it is certain that even a proceeding for assessment cannot be taken after five years.

C *Padampat Singhania and others v. Controller of Estate Duty, Kanpur*, 122 ITR 162 at 163, relied on.

D *Controller of Estate Duty v. Bhola Dutt*, 130 ITR 468 approved.

P.C. Saxena v. The State, 104 ITR 106, distinguished.

Black's Law Dictionary (fifth edition) page 816, referred to.

E 1.2 No doubt, both under sub-section (1), clause (b) and sub-section (2), the language used is "no order shall be made upon his application". To require in a case of this character, the production of a certificate from the Controller would amount to the insistence of an impossible compliance.

F 1.3 The Division Bench of the High Court was not correct in holding that Section 73A was only applicable to proceedings initiated under Section 59. Merely because Section 59 says "subject to section 73A" that does not mean a statutory bar under Section 73A is lifted. On the contrary, Section 53A reinforces the rigour of Section 73A. The words "commencement of any proceedings under the Act" are comprehensive enough to include Section 59 as well. Equally, it was not correct in holding that the application of 73A to cases coming under Section 56 would make the latter Section unsustainable. That will be only placing a literal interpretation of Section 56 regardless of situation.

H 1.4 If, therefore, the object of Section 73A is unambiguous to bar the

commencement of any proceeding for levy after the period of five years in the case of first assessment, the rigour of the Section cannot be diluted, by introducing a construction not warranted in the situation. If it was the intention of the Parliament to provide exceptional cases making Section 73-A inapplicable to such cases nothing would have been easier than to have so expressed. The language under Section 73A is imperative. It admits of no doubt that there cannot be two limitations (i) in a case where the assessee files a belated return, and (ii) in a case where the assessee seeks a succession certificate. In such a case where the assessee, as in the instant case, seeks a certificate from the Controller, all that the Controller has to say is that no such certificate could be issued since in view of the statutory bar under Section 73A. In this context, Section 56 will have to be given meaning and life. He who clings to the letter of the law clings to the dry bone; that would be against the spirit of the Act.

Herbert Broom Legal Maxims, pp. 466-67.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2107 of 1980.

From the Judgment and Order dated 16.3.1979 of the Calcutta High Court in Appeal No. 348 of 1973.

Shanker Ghosh and P.K. Mukharjee for the Appellant.

B.B. Ahuja, Ms. A. Subhashini and Manoj Arora for the Respondents.

The Judgment of the Court was delivered by

MOHAN J. This appeal by certificate is directed against the judgment and order of the Calcutta High Court dated 16th March 1979 in Appeal No. 348 of 1973.

The facts are that on 6th February, 1967 one Ganga Singh, governed by Mitakshara School of Hindu Law, died intestate. He left two sons, the appellant and one Binod Singh. The wife of Ganga Singh had pre-deceased him. As the appellant and Binod Singh were minor at the time of death of Ganga Singh the maternal uncle of the appellant moved an application in the City Civil Court at Calcutta in March 1967 for the appointment of guardian of the appellant and his brother. Accordingly, he was appointed

A as the guardian. When the paternal uncle of the appellant and his brother appealed against the order, the appointment was confirmed. However, the guardian was directed to continue till the appellant attained majority.

B On 7th December, 1970 the appellant attained majority. As karta he applied to the City Civil Court at Calcutta for the grant of a succession certificate in respect of the estate of Ganga Singh. It appears that the guardian never filed the account of the property or the return as required under Sections 53 or 56 of the Estate Duty Act, 1953 (hereinafter referred to as the Act). The appellant being a minor did not know about this. The result is that no account had been filed by any person in respect of the estate of Ganga Singh within five years from the date of his death.

D In the proceedings before City Civil Court for the grant of succession certificate it was pointed out that a certificate from Estate Duty Authority was necessary under Section 56(2) of the Act. It was urged on behalf of the appellant that in view of Section 73A of the Act the time to commence any proceedings for levy of estate duty had become barred inasmuch as five years had expired from the date of the death of Ganga Singh. Hence, the question of production of certificate under Section 56(2) would not arise.

E By an order dated July 25, 1972 the learned Chief Judge of the City Civil Court held that he could not go into this question since the authorities constituted under the Act alone could decide this. Since the appellant was advised to file an account to the Estate Duty Authority, he filed the return on 18th August, 1972 with the Assistant Controller of Estate Duty. As per F the return the estate was valued approximately at Rs. 52,000. The appellant was served with a notice under Section 58(2) along with a questionnaire by the first respondent, the Assistant Controller of Estate Duty, fixing the date for hearing. On the said date of hearing the appellant contended that no proceedings could be initiated in view of the statutory bar under Section G 73A, inasmuch as the period of five years had expired from the date of the death of Ganga Singh. Hence, no proceedings could be commenced. In spite of these objections, the first respondent adjourned the case calling upon the appellant to furnish certain particulars. It is under these circumstances the notice dated 4th of September, 1972 issued under Section 58(2) of the Act along with a questionnaire and the proceedings were H challenged in the High Court of Calcutta by way of a writ petition in Matter

No. 417 of 1972. The learned Single Judge making the rule absolute held that the impugned notice under Section 58(2) of the Estate Duty Act, 1953, dated 4th September, 1972 was cancelled by a writ of mandamus.

Aggrieved by the said order, the first respondent took up the matter in appeal. The Division Bench considered the scope of Section 73A vis-avis Section 56 and concluded that Section 73A does not do away with the liability of an accountable person for payment of duty. It only bars the initiation of proceedings for levy of duty. Therefore, if the liability remains but proceedings cannot be initiated, there is no question of full payment of duty. In such a case, it cannot be stated in the certificate by the Controller that there is no claim of estate duty from accountable person. Accordingly, the bar of limitation is not applicable to cases as provided under Section 73A where application is made for grant of representation or succession certificate and the account or the copy application is delivered to the Controller as required under Section 56. Thus, this appeal by special leave.

Mr. S. Ghosh, learned counsel for the appellant would urge that the construction placed by the Division Bench is totally incorrect. Section 73A is comprehensive in its scope in so far as it throws a statutory bar preventing the authority from commencing any proceeding after the expiry of five years. Having regard to the use of words "under this Act" that will take within it Section 56 also. If in any case of this character the appellant is required to produce a certificate from the Controller it will be requiring him to do the impossible. In respect of his submission he would place reliance on the ruling of the Allahabad High Court in *Controller of Estate Duty v. Bhola Dutt*, (130 ITR 468). That was a case when the proceeding was sought to be commenced on the basis of a return filed by the accountable person voluntarily after five years. The High Court held that the Assistant Controller had no jurisdiction because of the expiry of the limitation. It is that ratio which has to be adopted in this case.

If the interpretation placed by the High Court is accepted it would amount to putting a premium on the laches of the authority and enabling it to do something indirectly which it cannot do even directly.

The view of the High Court that no grant of representation or succession certificate can be made after the expiry of five year, cannot be supported. Section 56 will have to be so read as to bring about a har-

A monious construction between Section 73A and Section 56. No doubt if there is no original assessment, reassessment is impossible but on the score the statutory bar under Section 73A cannot be lifted. If, as held by the High Court, Section 73A is made inapplicable where application is made for the grant of representation or succession certificate and the account or copy application is delivered to the Controller as required by Section 56 it will be conferring an additional power on Controller which is not in contemplation under the Act. The strict literal interpretation will defeat the object and purpose of the statutory bar under Section 73A. In support of the submission reliance is placed on Herbert Broom's Selection of Legal Maxims : QUI HAERET IN LITERA HAERET IN CORTICE (Page 466).

In opposition to this, Mr. B.B. Ahuja, learned counsel for the Revenue comments the acceptance of the view of the Division Bench of the High Court. When Section 56 is mandatory in character the requirement of that Section cannot be dispensed with even by Court. The party who seeks a succession certificate or representation in Civil Court is bound to fulfil the statutory conditions without any exception, is exactly the view taken by the Delhi High Court in *P.C. Saxena v. The State*, (104 ITR 106).

Section 73A uses the word "levy". As to what exactly is mentioned by levy under the Act could be gathered by *Padampat Singhania and others v. Controller of Estate Duty, Kanpur*, (122 ITR 162 at 163). Therefore, there is no merit in the plea.

We shall now proceed to consider the relative merits of the respective submissions. Section 73A reads as follows:

"73A. No proceedings for the levy of any estate duty under this Act shall be commenced—

(a) in the case of a first assessment, after the expiration of five years from the date of death of the deceased in respect of whose property estate duty became payable; and

(b) in the case of a re-assessment, after the expiration of three years from the date of assessment of such property to estate duty under this Act."

A careful reading of the above Section discloses the following :

(i) For the levy of any estate duty

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(ii) Under this Act

(iii) No proceedings shall be commenced.

We are concerned, in this case, only with clause (a). Therefore, the fourth qualification will be after the expiration of five years from the date of death of the deceased. The language, in our considered view, is unambiguous. This section throws a statutory bar and is comprehensive in nature. In so far as it says "no proceeding under this Act" that means any proceeding whatever in relation to levy can ever be commenced after five years. The word "levy" in *Black's Law Dictionary* (fifth edition) at page 816 is stated thus :

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"Levy, v. To assess; raise; execute; exact; tax; collect; gather; take up; seize. Thus, to levy (assess, exact, raise, or collect) a tax; to levy (raise or set up) a nuisance; to levy (acknowledge) a fine; to levy (inaugurate) war; to levy an execution, i.e., to levy or collect a sum of money on an execution."

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As a matter of fact, in *Padampat Singhania* (supra) the meaning of this word under this very Act came to be laid down which is extracted as under:

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"The word "levy" has been interpreted by the Supreme Court in the case of *Assistant Collector of Central Excise v. National Tobacco Co. of India Ltd.*, AIR 1972 SC 2563, as embracing within it the process of assessment and also the imposition of tax."

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Therefore, even a proceeding for assessment cannot be taken after five years. That much is certain. Now, we come to the decisions cited on behalf of the appellant. In *Controller of Estate Duty v. Bhola Dutt*, (130 ITR 468 at 470) the following passage is found :

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"This provision lays down a clear and categorical bar to the commencement of assessment proceedings. They cannot be commenced after the expiry of five years from the date of death of the deceased.

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A Under the E.D. Act, the assessment proceedings commence with the filing of the return as prescribed by s. 53(3) of the Act and, under it, the return could validly be filed within six months of the date of death or within such further time as may be extended by the Asst. Controller. That provision obviously is not applicable to the facts of the present case. Under s. 56 of the Act another method of commencement of assessment proceedings is by the Controller requiring the accountable person to file the requisite return. Yet another method of commencement of assessment proceedings is prescribed by s.58 of the Act. Sub-section (4) of s.58 provides that in any case where no account has been delivered as required by s.53 or s.56, or the person accountable fails to comply with the terms of the notice served under sub-s. (2), the Controller shall make the assessment to the best of his judgment and determine the amount payable as estate duty. In this provision assessment proceedings could be commenced by the Controller in case the requisite return has not been filed by the accountable person. But to all these modes of commencement of assessment proceeding s.73A is applicable. Ex hypothesi assessment proceedings under either of these provisions could not validly be commenced after the expiry of the period of limitation prescribed by s.73A of the Act. Here, the proceedings were sought to be commenced on the basis of the return filed by the accountable person voluntarily but after the expiry of the prescribed period of five years. In view of s.73A, the Asst. Controller had no jurisdiction to commence the proceedings even on the basis of such a voluntary return.

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G Our attention was invited to s.56 of the Act. It is true that s.56 does not prescribe any period of limitation, but it applies in limited circumstances. Sub-section (1) of s.56 applies to a case where the executor of the deceased wants a representation certificate. Then alone he is required to file an account of the properties of the deceased to the Controller. Under sub-s. (2), the accountable person is required to produce a certificate from the Controller that the requisite estate duty has been paid in respect of the property for which a succession certificate is applied for. Proceedings under s.56 commence when some one

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desires to have a representation certificate or a succession certificate, not otherwise. In the present case, none of the two situations have occurred. We are, therefore, clear that the assessment proceedings were invalid and were rightly quashed by the Tribunal." A

We think the High Court is right in its approach. In opposition to this, what is relied on is the case in *P.C. Saxena* (supra). It is sufficient to extract the head-note: B

"In 1966 the appellant applied in the court of the Subordinate Judge for grant of a succession certificate to realise various debts and securities of the deceased who had died on October 28, 1959. The Subordinate Judge allowed the petitions and ordered grant of the succession certificate subject to the production of a certificate of clearance in respect of estate duty under section 56(2) of the Estate Duty Act, 1953. The appellant thereupon applied for exemption from complying with the condition for production of the clearance certificate in respect of estate duty claiming that in view of Section 73A of the Act no proceedings could be commenced for levy of estate duty on the estate of the deceased after the expiry of five years from the date of his death. The Subordinate Judge rejected the application for exemption. On appeal to the High Court : C D E

Held, dismissing the appeal, (i) that the civil court did not possess any jurisdiction or discretion to waive the condition under section 56(2) of the Act which was precedent to the grant of representation or succession certificate; F

(ii) that the bar imposed by Section 73A of the Act could not be claimed by a party who sought a succession certificate and applied to a civil court for grant of representation or succession certificate and he was bound to fulfil the statutory conditions, without any exception, before obtaining the certificate." G

We are of the view that this is only an authority for the proposition that the civil court does not possess any jurisdiction or discretion to waive the condition to produce the certificate from the Controller which is a precedent to the grant of representation or succession certificate. H

A Now, we come to Section 56. That is extracted below:

"56. (1) In all cases in which a grant of representation is applied for—

B (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
C 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
D (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 a 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."
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No doubt, both under sub-section (1) clause (b) of sub-section (2) the language used is "no order shall be made upon his application". To require in a case of this character the production of a certificate from the Controller would amount to the insistence of an impossible compliance.
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The view of the Division Bench of the High Court is unacceptable to us when it holds that Section 73A is only applicable to proceedings initiated under Section 59. Merely because Section 59 says "subject to section 73A" that does not mean a statutory bar under Section 73A is lifted.
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On the contrary, Section 53A reinforces the rigour of Section 73A. The words "commencement of any proceedings under the Act" as we stated above are comprehensive enough to include Section 59 as well.

Equally, the finding that the application of Section 73A to cases coming under Section 56 would make the latter Section unsustainable is not correct. That will be only placing a literal interpretation of Section 56 regardless of situation. In this connection, we may usefully quote *Herbert Broom's Legal Maxims* (Pages 466-67):

"QUI HAERET IN LITERA HAERET IN CORTICE (Co. Litt. 283 b.)—

He who considers merely the letter of an instrument goes skin-deep into its meaning.

The law of England respects the effect and substance of the matter, and not every nicety of form or circumstance. "The reason and spirit of cases make law, and not the letter of particular precedents". Hence it is, as we have already seen, a general rule connected with the interpretation of deeds and written instruments, that, where the intention is clear, too minute a stress should not be laid on the strict and precise signification of words. For instance, by the grant of a remainder, a reversion may pass, and a converso; and if a lessee covenant to leave all the timber which was growing on the land when he took it down, but leaves it there; for this, though a literal performance of the covenant, would defeat its intent."

"In interpreting an Act of Parliament, likewise, it is not always a true line of construction to decide according to the strict letter of the Act; but, subject to the remarks already made, the Courts may consider what is its fair meaning, and expound it differently from the letter, in order to preserve the intent. The meaning of particular words, indeed, in statutes, as well as in other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be attained."

- A** If, therefore, the object of Section 73A is unambiguous to bar the commencement of any proceeding for levy after the period of five years in the case of first assessment, we do not think we can dilute the rigour of Section 73A by introducing a construction not warranted in the situation. If it was the intention of the Parliament to provide exceptional cases making Section 73A inapplicable to such cases nothing would have been easier than to have so expressed. The language under Section 73A is imperative. It admits of no doubt that there cannot be two limitations (i) in a case where the assessee files a belated return and (ii) in a case where the applicant seeks a succession certificate. In such a case where the assessee, as in the instant case, seeks a certificate from the Controller, all that the Controller has to say is, that no such certificate could be issued since in view of the statutory bar under Section 73A. In this context, Section 56 will have to be given meaning and life. He who clings to the letter of the law clings to the dry bone; that would be against the spirit of the Act.
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In the result, we set aside the impugned judgment. The appeal will stand allowed. However, there shall be no orders as to costs.

N.P.V.

Appeal allowed.