

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 80 of 2015**

- Ramdayal S/o Dashru Satnami Aged About 32 years R/o Village Rasni, Thana Arang Tahsil Arang, Distt. Raipur Chhattisgarh Halmukam Village Amethi, Thana Arang Tahsil Arang, Distt. Raipur Chhattisgarh

---- Applicant**Versus**

- Public At Large Distt. Raipur Chhattisgarh

---- Respondent

For applicant	: Mr. Akhilesh Kumar, Adv.
For Respondent	: Not noticed.

Order On Board**05/08/2015**

1. Heard on motion as also on IA No. 1/15 for condonation of delay in filing the revision as the instant civil revision is preferred after 15 days of its limitation.
2. On due consideration of the reasons assigned in the application, IA. No. 1/15 is allowed. Delay in filing the revision is condoned.
3. Instant revision is preferred against the order the order dated 31-3-2015 passed in Misc. Civil Appeal No. 21/12 whereby learned 7th Additional Distt. Judge, Raipur dismissed the appeal filed by the appellant against the order dated 30-9-2011 passed by the 6th Civil Judge Class -I, Raipur in Succession Case No. 36/11.
4. Learned 6th Civil Judge in Succession Case No. 36/11 passed order dated 30-9-2011 holding that as per provisions of Section 372 of the Indian Succession Act (in brevity 'Act') the succession certificate can only be granted for any debt or security. Instant application is not filed for any debt or security. Learned succession court dismissed the application for issuance of succession certificate on the basis of will. Learned appellate court in misc. civil appeal affirmed the above-mentioned legal position and dismissed the appeal and affirmed the order passed by the succession court.
5. Facts necessary for disposal of this revision are that the applicant filed a claim case No. 197/2009 against 3 applicants under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of his alleged mother Asin Bai. Learned Claims Tribunal vide award dated 10-9-2010 held that the applicant was not son of the deceased Asin Bai inter alia he had claimed for compensation as he was having a will executed by

deceased Asin Bai. Learned Claims Tribunal held that it is not proved that the applicant was legal heir/legal representative of deceased Asin Bai. Hence claims Tribunal dismissed the claim for compensation filed by the applicant. Against such dismissal the applicant preferred MA(C) No. 1036/2010 before this Court. The Division Bench of this Court vide order dated 11-3-2011 while disposing of the misc. appeal, granted liberty to the appellant to file a fresh claim petition after getting a succession certificate from the court of law if he was dependent on the deceased when she was alive. Availing the liberty, the applicant filed succession case as above mentioned which was dismissed by the succession court and affirmed by the appellate court against which instant revision is filed.

6. Learned counsel for the applicant submits that as he was given liberty in para 10 of the impugned order, he approached the succession court for grant of succession certificate on the basis of the will. Both the courts below erred by not appreciating the liberty given by the High Court. Therefore, the order passed by both the courts below are illegal and perverse. He sought for interference in revisional jurisdiction and prayed that the revision may be heard and appropriate direction may be issued to succession court. The orders passed by the succession Court and the appellate court be set aside and the succession court be directed to dispose of the matter as per liberty granted by this Court.
7. For consideration on motion, this Court has to see whether any prima facie gross mistake of law is committed by the appellate court or not.
8. It appears that the applicant filed an application under Section 372 of the Act for grant of succession certificate on the basis of alleged will that he is legal representative of deceased Asin Bai. As a will is in his favour, he is entitled to file a suit for compensation as per provisions of Section 166 of the Motor Vehicles Act, 1988.
9. A perusal of the order passed by Hon'ble Division Bench of this Court dated 11-3-2011 goes to show that the division bench has not declared any law so as to enable any person to claim succession certificate through instrument of will but merely granted liberty and as per the liberty given, the applicant approached succession court, and then appellate court. Both the courts below dismissed the case as per law. The courts below by the concurrent finding held that Section 372 of the Act entitles a person to file an application for grant of succession certificate on the basis of debt and security. While dismissing the application for grant of succession certificate on the basis of will in his favour, learned both the courts below have not committed any

error of law. Even other wise statutes are having prominence over court. It is the courts which make order on the basis of the provisions made in the statute and the source of all statutes is the Constitution of India. In the order dated 11-3-2011 by the Hon'ble Division Bench of this Court, no law is declared. Simply a liberty is granted to the appellant. Both the Courts below have followed the provisions of law. Their orders requires no interference as declaration of legal heir on the basis of will is not the subject matter of security.

10. On due consideration, this court is of view that since no any illegality or impropriety is committed by both the courts below hence no interference is required in the orders of both the courts below and the instant revision is liable to be dismissed at motion stage itself.
11. Before parting, the question whether the applicant is legal representative or competent to file a claim petition on account of death of Asin Bai is not answered or examined on its merit. So far there is no prayer for the same but this court feels it appropriate to grant liberty to the applicant to approach before the civil court regarding his civil right as he claims to be legal representative of deceased Asin Bai by an instrument of will if permissible under the law.
12. With the above observations and liberty, the instant civil revision is dismissed.
13. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge