

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 2730 OF 2015

|                                           |    |             |
|-------------------------------------------|----|-------------|
| Mrs. Abha Dastane - Rao                   | .. | Petitioner  |
| vs.                                       |    |             |
| Mr. Prabhakar Narsingh Deolankar and ors. | .. | Respondents |

Ms Abha Dastane-Rao, Petitioner-in-person.  
Mr. S.N. Chandrachood for Respondent No.1.  
Mr. Hemant Ghadigaonkar for Respondent Nos.2 and 3.

**CORAM : M. S. SONAK, J.**

Date of Reserving the Judgment : 27 April 2015.

Date of Pronouncing the Judgment : 30 April 2015.

**JUDGMENT :-**

1] Rule. With the consent of and at the request of learned counsel for the respondents, Rule is made returnable forthwith.

2] This petition challenges the orders dated 20 March 2014 and 24 July 2014 made by the Joint Civil Judge, Senior Division at Pune, both of which, have the effect of dismissing the petitioner's application seeking condonation of delay in instituting the application for revocation of probate issued on 14 December 2007.

3] The application seeking condonation of delay came to be numbered as Miscellaneous Application No. 1187 of 2013 (Exhibit-1) and same was rejected on 20 March 2014. The order dated 24 July 2014, rejects the review petition against the same. The two orders, shall hereinafter be referred to as the impugned orders.

4] The petitioner, who appeared in person, submitted that the Indian Succession Act, 1925 (said Act) has not prescribed any period

of limitation as such for the purposes of instituting an application under Section 263 of the said Act, seeking revocation of probate. In any case, even if it is assumed that the period of limitation is three years in terms of Article 137 of the Limitation Act, 1963, the same has to be construed from the date of knowledge of jurisdictional facts, which afford cause of action to institute an application for revocation. Further, since the petitioner resides abroad, the period during which she was abroad, has to be excluded for the purposes of determination of the period of limitation in terms of Section 29(2) and Section 15(5) of the Limitation Act, 1963. For all these reasons, the petitioner submitted that the impugned orders may be set aside.

5] Mr. S.N. Chandrachood, learned counsel for respondent No.1, defended the impugned orders by submitting that the petitioner had made a patently false statement in the application seeking condonation that she acquired knowledge of issuance of the probate on 18 October 2013, when in fact, there is ample material on record which establishes beyond any reasonable doubt that the petitioner was aware of issuance of probate dated 14 December 2007 in the month of January 2008 or soon thereafter. Mr. Chandrachood placed reliance upon *Mahabaleshwar R. Hegde Vs. Lakshmi A. Salgaocar & ors.*<sup>1</sup>, and submitted that delay cannot be condoned on sympathetic grounds, particularly where the applicant makes gross factual misstatements in the application seeking condonation of delay. Mr. Chandrachood, then placed reliance upon decision of this Court in case of *Adil Phiroz Makhania Vs. Dilip Gordhandas Gondalia & anr.*<sup>2</sup>, and submitted that the provisions contained in Article 137 of the Limitation Act, 1963 apply to an application seeking revocation of

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1 2008(2) Bom.C.R.(Cri.) 911

2 2014(5) Bom.C.R. 384

probate and where such application was made beyond three years from the date of probate or in any event even from date of alleged knowledge of the probate, the same has to be held as barred by law of limitation.

6] Mr. Hemant Ghadigaonkar, learned counsel for respondent Nos.2 and 3, supported the petitioner. Mr. Ghadigaonkar submitted that the period of limitation does not commence from the date of issuance of probate, but rather from the date of accrual of cause of action for the revocation of probate. Mr. Ghadigaonkar submitted that in the present case revocation was applied for on the ground that respondent No.1, to whom the grant was made has willfully 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. In this view of the matter, Mr.Ghadigaonkar submitted that the petitioner's application was not at all barred by limitation and in any case, sufficient cause has been shown for condonation of delay.

7] The rival contention now fall for determination.

8] At the outset, the submission of the petitioner based upon her interpretation of Section 29(2) and Section 15 of the Limitation Act, 1963 is required to be rejected as being thoroughly misconceived. Though, the petitioner has stated the details of the period during which she was abroad, the same are clearly irrelevant upon plain reading of the provisions contained in Section 15(5) of the Limitation Act, 1963, even assuming that the same are at all attracted by virtue of Section 29(2) of the Limitation Act, 1963.

Section 29(2) of the Limitation Act, 1963 merely provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. No provisions was pointed out under the Indian Succession Act, 1925, which provides for any period of limitation as such for instituting an application under Section 263 of the said Act seeking revocation of probate. In such circumstances, there is no question of the provisions under Section 29(2) of the Limitation Act, 1963, at all being attracted. That apart, Section 15(5) of the Limitation Act, 1963 only provides that in computing the period of limitation for any suit the time during which the defendant has been absent from India shall be excluded. The application under Section 263 of the said Act, is not a suit and therefore, there is no question of applicability of the provisions contained in Section 15(5) of the Limitation Act, 1963. Further and more significantly, it is the petitioner, who has instituted the application under Section 263 of the said Act and it is the respondents to the said application, who are in the position of the defendants (so to say). It is not the case of the petitioner that any of the respondents/defendants to the said application have been absent from India. This is yet another reason as to why the provision contained in Section 15(5) of the Limitation Act, 1963 is not at all attracted in the present case. Accordingly, the petitioner's contention in this regard is rejected.

9] This Court, in case of *Adil Phiroz Makhania (supra)*, has held that the provisions contained in Article 137 of the Limitation Act, 1963 apply to the petition for revocation of probate. Accordingly, it is not possible to accept the petitioner's submission that there is no period of limitation prescribed for revocation of a probate. Even otherwise, it is settled position in law that where the period of limitation is not prescribed, there is obligation to seek redress within a reasonable period.

10] There is, however, substance in the contention raised by Mr. Ghadigaonkar, learned counsel for respondent Nos.2 and 3, in support of the petition that the period of limitation commences, not from the date of issuance of probate, but from the date of accrual of cause of action for seeking revocation of the probate. It is possible that in some situation, both the dates may coincide, but it need not invariably be so. The Explanation (e) to Section 263 of the said Act, reads thus:

*“(e) the person to whom the grant was made has willfully 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.”*

11] The stage for accepting an inventory or account would obviously arise after the probate has been issued. Upon default on the part of person to whom the grant has been made to exhibit an inventory or account, or upon knowledge that the inventory or account which is exhibited, is untrue in material respect, the cause of action would accrue for seeking revocation of grant of probate. Therefore, it cannot be said that in every case, the date of issuance

of probate will be only relevant date for the purpose of limitation to commence in the matter of seeking revocation.

12] In the present case, there is no dispute that the probate was issued on 14 December 2007 and soon thereafter, i.e., by January 2008 or thereabouts, the petitioner had knowledge, about the issuance of such probate. However, it is the case of the petitioner that the cause of action for seeking revocation of probate has arisen only within a period of one year, prior to the date of institution of the petition seeking revocation of probate, which is 25 November 2013. In is in this context, that the petitioner, in her application seeking condonation of delay, has stated that there is no delay in filing the petition seeking revocation. However, since probate was issued on 14 December 2007, there appears to be '*apparent delay*'. The petitioner has stated that even on that date of filing the petition seeking revocation of probate or application seeking condonation of delay, respondent No.1 has not furnished required Indemnity Bond or submitted true and full inventory of the subject matter of the probate property or credit exhibits in respect of the same. The petitioner has also made a statement that the respondent No.1 failed to inform the Court about his having appointed a Power of Attorney and disbursal of certain amounts in December 2012. The petitioner has averred that such information was obtained by the petitioner in pursuance of inspection of records on 18 October 2013. This is really not the stage of determining whether such statements are true or false. However, on the basis thereof, it cannot be said that the petition seeking revocation of the probate was barred by law of limitation, solely computing the period of limitation from the date of issuance of probate, i.e., 14 December 2007. The impugned orders, since they have proceeded on the basis that in all cases period of

limitation commences from the date of issuance of probate, stand vitiated and are required to be set aside.

13] The impugned orders, also find fault with the petitioner for having allegedly stated that she acquired knowledge of the issuance of probate only on 18 October 2013, when in fact, the material on record suggests that the petitioner was aware of the same by January 2008 itself. This circumstance was emphasized upon by Mr. Chandrachood, the learned counsel for respondent No.1, *inter alia*, by reference to the decision of this Court in case of *Mahabaleshwar R. Hegde (supra)*, as well decisions in the case of *State of Maharashtra & ors Vs. Vithu Kalya Govari & ors*<sup>3</sup> and the decision of the Supreme Court in case of *Pundlik Jalam Patil (D) by Lrs. vs. Exe. Engineer Jalgaon Medium Project and anr.*<sup>4</sup>, all of which lay down that if incorrect statements are made in the application seeking condonation of delay, such application can be rejected on the said ground alone. However, if the petitioner's application seeking condonation of delay is closely perused, there is really no statement to the effect that the petitioner came to know about the issuance of probate dated 14 December 2007 on 18 October 2013. The statement in paragraph '2' of the application reads as follows:

“2..... There is various illegalities and grounds exist for the revocation of probate, which the Petitioner has come to know on 18/10/2013, when she inspected the record and proceedings of the main petition bearing M.A. No. 359/2006”.

14] The impugned orders, to the extent they proceed on the premise that the petitioner has made misstatement of fact with regard to her knowledge of issuance of the probate on 14 December

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3 2008(5)Bom.C.R.323

4 2008(6) Bom.C.R. 513

2007, are therefore, vitiated and are required to be set aside. The impugned orders record that the petitioner, in the course of her cross-examination, admitted that she was aware about the issuance of the probate in January 2008, but she made a misstatement in the application seeking condonation that she acquired such knowledge only on 18 October 2013. As noted earlier, no such misstatement was made by the petitioner and accordingly, the impugned orders, warrant interference.

15] The impugned orders, also find fault with the petitioner for failure to '*explain each day's delay properly*'. As it now transpires, it cannot be said that the petitioner's application seeking revocation of probate on the grounds contained in Explanation (e) to Section 263 of the said Act, was barred by law of limitation. Accordingly, there arises no question of offering explanation for each day's delay. Even otherwise, it is not the law that each day's delay is required to be scrupulously explained. This is yet another reason which warrants interference with the impugned orders.

16] The decisions upon which Mr. Chandrachud, learned counsel for respondent No.1, placed reliance are distinguishable, because in the present case, it cannot be said that the petitioner made any misstatement of fact as to knowledge of the probate, in the application seeking condonation of delay. Mr. Chandrachud is, however, right in his submissions based upon Article 137 of the Limitation Act, 1963 as also inapplicability of the provisions of Sections 29(2) and 15(5) of the Limitation Act, 1963 to the facts and circumstances of the present case.

17] There is necessity to record that respondent Nos.2 and 3, on or about 5 January 2008, have already applied for revocation of the probate issued on 14 December 2007. The said applications are pending consideration. Accordingly, no prejudice as such will occasion to respondent No.1, if the petitioner's application for seeking revocation of probate, which is stated to be mainly based upon the ground contemplated by Explanation (e) to the Section 263 of the said Act is entertained and decided on its own merits. This was the relevant circumstance, which, the learned Civil Judges, who made the impugned orders, appear to be overlooked.

18] Although, the order dated 24 July 2014 is being set aside, it is clarified that there was no error on the part of the learned Civil Judge in declining to exercise the restricted review jurisdiction. There was, however, legal infirmity in making of the order dated 20 March 2014. Consequent upon setting aside the order dated 20 March 2014, as a corollary the order dated 24 July 2014, is required to be set aside.

19] In the aforesaid reasons, the impugned order dated 20 March 2014 and 24 July 2014 are set aside. It is held that there was no delay as such in instituting the petition for seeking revocation of probate and in any case, the delay, if any, stands satisfactorily explained.

20] Rule is, accordingly, made absolute to the aforesaid extent.

21] It is made clear that this Court has not examined the rival contentions of the parties on the aspect of revocation of the probate. Accordingly, it shall be open for the Civil Court to examine these aspects on their own merits and in accordance with law, without in any manner being influenced by any observations made in this order.

**(M. S. SONAK, J.)**