

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 4572 OF 2015

Kanwaljit S. Bakshi

.. Petitioner

vs.

Sarla A. Mishra

.. Respondent

Mr. Anil P. Bagwe for the Petitioner.

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

**DATE : 5 May, 2015.**

**P.C. :-**

1] Not on board. Upon production, taken on board.

2] This petition challenges the order date 3 November 2014, rejecting the petitioner's application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) in the context of application made by the respondent seeking revocation of probate.

3] The impugned order, does not really decide the issue of limitation, which was raised by the petitioner in his application under Order 7 Rule 11 of the CPC. The impugned order only states that such issue will be decided alongwith other issues, which arise at the stage of considering the application for revocation of probate.

4] In a case where issue of limitation is a mixed issue of law and fact, it is always permissible for the Court to decline exercise of powers under Order 7 Rule 11 of the CPC, assuming that the same are available in matters of deciding an application for revocation of probate.

5] Thus construed, it cannot be said that there is any jurisdictional error in making of the impugned order. Further, there is no necessity to consider the contention of the learned counsel for the petitioner that the respondent lacks *locus standi* to seek revocation of the probate. This is because, such contention, if raised, will certainly be considered by the trial Court whilst deciding the issue of revocation of probate.

6] Accordingly, it cannot be said that there is any jurisdictional error in making of the impugned order. All questions have been kept open for the Civil Judge and there is nothing to presume that such question of limitation and *locus standi* will not be considered by the Civil Judge alongwith other issues that may arise in the application seeking revocation of probate.

7] In view of above, there is no necessity to entertain the present petition. Accordingly, present petition is dismissed. There shall be no order as to costs.

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

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