

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Revision Application No. 37 of 2016

Mohammed Ibrahim Gouri s/o Mohammed
Mahmood Gouri
And Another.

.. Petitioners.

Versus

Mohammed Zahed Hussain s/o
Mahmood Hussain
And Others.

.. Respondents.

Shri. Sayyed Tauseef Yaseen, Advocate, for petitioners.

Ms. A.N. Ansari, Advocate, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 5th APRIL 2016

ORDER:

1) The revision is filed against the judgment and order of Regular Civil Appeal No.275/2014 which was pending in the Court of District Judge-5, Aurangabad. The appeal was filed by the present petitioners to challenge the judgment and order of M.A.R.J.I. No.719/2014 which was pending in the Court of the Civil Judge, Senior Division, Aurangabad. The said application was filed by the present petitioners under section 383 of the Indian

Succession Act for revocation of the succession certificate granted in favour of the present respondent No.1. The application for revocation is rejected by the Courts below and so the present proceeding is filed. Both the sides are heard.

2) Deceased Gouri Siddiqua Sultana was the sister of the present petitioners. The deceased was the wife of the present respondent No.1. She was employed as full time teacher in Dr. Zakir Hussain Urdu Junior College of Vocation Education, Aurangabad. Prior to her marriage with the respondent No.1, she had nominated her mother and brothers as nominees for getting terminal benefits of service (provident fund, gratuity, pension, insurance etc.). After her death, present respondent No.1 filed M.A.R.J.I. No.390/2014 for succession certificate. After following the procedure laid down for issuance of such certificate, the Civil Judge, Senior Division granted the succession certificate. When the succession certificate was produced before the employer, the present petitioners rushed to the Court and applied for revocation of the certificate.

3) In the application filed for revocation, it was contended by the present petitioners that their names were given as nominees by the deceased and so they are entitled to get all the aforesaid amounts. They contended that the relationship between the deceased and present respondent No.1 was not good and she had no intention to give anything to the respondent No.1. They contended that notice of the proceeding filed by the respondent husband for getting succession certificate was not given to them and so the procedure was not followed and so the certificate needs to be revoked. After hearing both the sides and after considering the record produced by both the sides and the provisions of the Maharashtra Civil Services (Pension) Rules, 1982, the Civil Judge, Senior Division, dismissed the application of the present petitioners and this decision is confirmed by the District Court.

4) The learned counsel for the petitioners submitted that as per the personal law, Muslim Law, the petitioners are entitled to get equal share with the husband of the deceased and so the order made by the

learned Civil Judge Senior Division needs to be set aside. He took this Court through the provisions of the Muslim law and in that regard he showed that the brothers are to be treated as sharers along with the husband. On the other hand, learned counsel for the respondent-husband placed reliance on the aforesaid rules and submitted that the succession certificate has been issued in accordance with the rules and the nomination is considered in accordance with the rules and so the certificate cannot be revoked. He submitted that the grievance of the nature raised by the present petitioners can be considered in other appropriate proceeding but not in the proceeding filed for succession certificate.

5) The learned counsel for the petitioners, brothers, placed reliance on a case reported as **(2009) 10 SCC 680 (Shipra Sengupta v. Mrudil Sengupta)**. In this case, the Apex Court has laid down that nominee entered in the service book only collects the amount on behalf of the persons entitled to succeed to the property of the deceased employee as per the personal law applicable to the deceased. There cannot be dispute over the

propositions. On the other hand, learned counsel for the respondent-husband placed reliance on the decisions of this Court given in **Civil Revision Application No.45/2015** (Beersing Charan Karosiya v. Tanhabai Pratap Karosiya) and **Civil Revision Application No.72/2013** (Kantabai Dhulaji Shriram v. Hausabai Dhulaji Shriram). In these two revisions this Court has discussed relevant provisions.

6) Before considering the aforesaid rival contentions and the reported cases it needs to be kept in mind in the present matter that in view of the decision of the Division Bench of this Court in the case reported as **2014(3) Bom. C.R. 641 (Nola J. Ranbhise v. Union of India)** the appeal was not tenable in the District Court and the appeal ought to have been filed by the present petitioners in this Court. Only due to this single circumstance it can be said that the dismissal of the appeal cannot be considered in the present proceeding on merits. Further it cannot be said that the present proceeding is the proper proceeding as in view of the said decision the present petitioners ought to have filed first appeal in this Court.

7) Considering the urgency of the matter, this Court feels it necessary to discuss some merits though that is not necessary in the present matter. It can be said that the brothers of the deceased, present petitioners, could not have remained as nominees. As the deceased was not having family only mother and minor brothers could have been named as nominees in strict sense. The definition of "family" is given in Rule 111(5) of the Maharashtra Civil Services (Pension) Rules. It can be said that there are only brothers who are challenging the decision given by the Civil Judge Senior Division and the mother is not there. Major brothers are not included in the definition of family. Provision of Rule 115 of the Rules further shows that nomination in favour of the person who is not included in the definition of family is invalid, if the family is in existence. Thus, the brothers, present petitioners cannot claim that the amount needs to be handed over to them by the employer as they are the nominees. In the present matter a letter of the employer dated 10-1-2013 is produced and it shows that after the marriage, the deceased had nominated her husband, present respondent No.1, and his name was entered in the

service book accordingly. Thus, correction has been made and so not much can be made out by the brothers on the basis of initial nomination made by the deceased.

8) In Civil Revision Application No.45/2015 (cited supra) this Court has discussed the purpose behind the issuance of succession certificate and the effect of issuance of the succession certificate on the persons who are entitled to succeed to the property of the deceased as per the personal law which was applicable to the deceased. The observations are at paragraphs 7 to 10 and they are as under :-

"7) On one hand there was heirship certificate granted in favour of Tanhabai under the provision of the Bombay Regulations Act 1827 and on the other hand relationship of the applicants from the proceeding No.81/2008 with Pratap was not disputed by Tanhabai. In view of these circumstances, the schemes of both these Acts need to be considered and the material needs to be considered to ascertain as to whether there was sufficient material on the basis of which the certificate granted under section 372 of the Act could have been revoked.

8) The provisions of the rules made under the Bombay Regulations Act 1827 show that they are framed for recognition of heirship. The provisions show that ordinarily even without having such certificate the heirs can manage the property of the deceased and they can sue or defend the

proceedings in respect of property of the deceased both movable and immovable. In spite of this position of law, if the heirs request for certificate, the procedure required in this Act needs to be followed. The procedure involves issuance of proclamation. If no objection is taken to the proceeding, the recognition can be granted by the Court. If there is objection and the objection involves the questions which are complicated or difficult, the Judge has power to suspend the proceeding till issues are tried by regular suit. The procedure further shows that refusal to give recognition does not finally determine the rights and the party who had come to the Court, can file suit for establishing the claims. Thus no title to the property is decided and only recognition to heirs of the deceased is given if the proceeding is not contested as already observed.

9) In Part X of the Act there are provisions regarding issuance of succession certificate. Certificate can be granted in respect of the property of the deceased which goes to the heirs of the deceased. In the present matter the brothers had claimed succession certificate in respect of provident fund and gratuity amount and such certificate can be issued in respect of provident fund as it is treated as security. Provisions of Sections 372 and 373 of the Act show that inquiry involved in this application is of summary nature and limited investigation is required to be made. These provisions show that public notice is required to be issued of this proceeding. Section 372 (3) of the Act shows that even if intricate questions of law or fact are involved which cannot be decided in summary manner, the Court may grant the certificate if the applicant has prima facie case. Thus in this provision even when there is summary procedure given and there is contest, the succession certificate can be issued. Inquiry after framing of issues etc. is required if there is contest but that inquiry is also summary in nature. The provisions show that the purpose of giving such certificate is to give authority to the holder of certificate to realize the debt or security of the deceased and to give valid discharge. Thus, this

is only authority given to the holder of the certificate to collect security or realize the debt and it needs to be presumed that the amounts so collected need to be disposed of in accordance with the rights of the persons who are entitled to this amount. That is the duty imposed on the person who is holding the certificate. This certificate is conclusive as against the persons owing such debt or who are liable to such security as provided in section 381 of the Act. Thus, the certificate cannot be used against the legal heirs of the deceased who have better title.

10) The provision of section 383 of the Act, which provides for revocation of the certificate, gives the grounds on the basis of which the certificate can be revoked. One of the grounds is that procedure which was conducted to obtain the certificate was defective in substance and there is another ground that the certificate was obtained fraudulently. These two grounds are considered by the Appellate Court."

9) In the present matter necessary procedure was followed. In view of the rules quoted and the purpose behind the issuance of the succession certificate, learned Civil Judge Senior Division could not have withdrawn the succession certificate by using section 383 of the Indian Succession Act. Thus, it is not possible to set aside the order made by the Civil Judge Senior Division. In the result, the civil revision application stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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