

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVN. APPLICATION NO. 649 OF 2015

Shri Haribhau Bhikaji Dayal ... Applicant
v/s
Shri Sunil Sahebrao Dayal & ors. ... Respondents

Mr.Sachin Gite for the applicant in CRA No.649 of 2015.
Mr.Sham Walve for the respondents.

***ALONG WITH
CIVIL REVN. APPLICATION NO. 707 OF 2015***

Shri Shantaram Bhikaji Dayal ... Applicant
v/s
Shri Sunil Sahebrao Dayal & ors. ... Respondents

Mr.R.N.Gite for the applicant in CRA No.707 of 2015.
Mr.Sham Walve for the respondents.

Coram: N.M. Jamdar, J.

Dated: 7 SEPTEMBER 2016

ORAL ORDER:

By consent of parties, both the revision applications which are connected, are taken up for final disposal forthwith.

2 By an order dated 6 October 2015, the learned District Judge, Niphad, has allowed the appeal challenging the judgment and order dated 28 January 2010, passed in Probate Application No.2 of 2007,

by the learned Civil Judge, Senior Division and has directed issuance of letters of administration.

3 The learned counsel for the parties have placed on record decision of the Division Bench in the case of *Nola Jonathan Ranbhise (Smt). v/s Union of India & ors.*¹. In this case, the question arose for consideration was, whether, in view of the provisions of Section 28-A(2) and (3) of the Bombay Civil Courts Act, 1869 being inconsistent to the provisions of Section 299 of Indian Succession Act, 1925, an appeal would lie to the District Court or to the High Court. The Division Bench has answered the issue as under :

'50. Accordingly, we pass the following order:

(a) It is hereby declared that sub-sections (2) and (3) of Section 28-A of the Bombay Civil Courts Act, 1869 are inconsistent with and repugnant to the provisions of Section 299 of the Indian Succession Act, 1925 and consequently the same stand impliedly repealed. Accordingly, every order made by the District Judge under the Indian Succession Act, 1925 or every order made by a Civil Judge invested with the powers of a District Judge or a District Court, as the case may be, under the Indian Succession Act, 1925 in terms of sub-section (1) of Section 28-A of the Bombay Civil Courts Act, 1869 shall be subject to appeal to the High court in accordance with the provisions of Code of Civil Procedure, 1908, applicable to appeals.

(b) The impugned judgment and order dated 4.11.2008 passed by the learned District Judge, 10, Pune

¹ 2014(3) Bom.C.R. 641.

in Civil Appeal No.167 of 2006 is quashed and set aside and the District Judge at Pune is directed to return the appeal memo in said Civil Appeal No.167 of 2006 for presentation to the High Court with a period of 30 days from today;

(c) Upon return of the appeal memo as aforesaid, the petitioner is at liberty to present the same before the High Court within 30 days, failing which the judgment and order dated 30.1.2006 passed by the Civil Judge, Senior Division in M.C.A. No.32 of 1999 shall stand confirmed.

(d) It is clarified that the judgments and orders passed by District Courts as first Appellate Courts and this Court as second Appellate Court in terms of sub-sections (2) and (3) of Section 28-A of the Bombay Civil Courts Act, 1869, upto the date of this judgment and order shall be regarded as valid, notwithstanding the reasoning and declaration contained in this judgment and order by applying the principle akin to de facto doctrine. However, where such judgment and orders have already been challenged on the ground of inconsistency of implied repeal of the provisions contained in section 28-A(2) and (3) of Bombay City Civil Courts Act, 1865, and such proceedings are pending adjudication, then they shall not be governed by the principles of akin to de facto doctrine.

4 It is, therefore, clear that an order passed by the District Court, after the decision of the Division Bench, would be without jurisdiction. In the circumstances, the Court will lack inherent jurisdiction to entertain an appeal. The learned counsel for the parties

also accept this position of law.

5 In the circumstances, the impugned order passed by the learned District Judge will have to be quashed and set aside and is accordingly quashed and set aside. It is open to the Respondents i.e. the Applicants before the District Court, to file an appeal in this Court. Considering the fact that a complex legal issue had to be resolved by the Division Bench by clarifying the position of law, the action of the Respondents in approaching the District Court cannot be said to be deliberate. Therefore, if an appeal is filed by the Respondents within a period of 30 days from today, the application for condonation of delay taken out by them will be favourably considered.

6 Learned counsel for the parties are unaware about the position of interim relief during the pendency of appeals in the District Court. It is clarified that if there was any interim order during the pendency of the appeals, the same will continue for a period of 30 days from today. Further extension, if any, will be on its own merits. All contentions of the parties on merits are kept open.

7 The civil revision applications are disposed of in above terms.

(N. M. Jamdar, J.)