

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO.438 OF 2017
IN
MISC. PETITION NO.24 OF 2017
WITH
NOTICE OF MOTION (L) NO. 2475 OF 2017
IN
APPEAL (L) NO. 438 OF 2017**

Anita Narendra Umrao @ Painter ... Appellant.

Versus

Shobha @ Asha Narendra
Painter @ Umrao ... Respondent

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Mr. Vishal kanade i/b. Prashant D. Patil for the Appellant.
Mr. Mayur Khandeparkar a/w Ms. Nafisa Khandeparkar and
Ms. Raksha Thakkar i/b. ALMT Legal for the Respondent.

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***CORAM : Smt. Vasanti A Naik &
Sarang V. Kotwal, JJ.***

DATE : 19th December, 2017.

P.C. :

By this intra court appeal, the order of the learned Single Judge, dated 17.11.2017 dismissing the misc. petition filed by the appellant for revocation of grant of letters of administration in favour of the respondent is appealed against.

The appellant claims to be the widow of deceased Narendra Painter. According to the appellant, the marriage between the appellant and Narendra was solemnized in Mumbai on

26.09.1971, the said date was later corrected to 19.06.1974. According to the appellant a son was born from the said wedlock. It is pleaded by the appellant in the misc. petition filed by her under Section 263 of the Indian Succession Act that after the death of Narendra, the respondents wrongly claimed that the respondent no.1 was the widow of Narendra and the other respondents were the sons and daughters of Narendra. It is stated in the misc. petition that the mutation in the revenue record was secured by the respondents, by misrepresentation. It is stated that the appellant had filed a suit against the respondent for a declaration that she is the widow of deceased Narendra and the suit was decreed. It is stated that the respondents had not disclosed in the application for grant of letters of administration that the suit was decreed in favour of the appellant. On the basis of the aforesaid pleadings, the appellant had sought the revocation of the grant of letters of administration under Section 263 of the Succession Act in favour of the respondents.

Mr. Kanade, the learned counsel for the appellant submitted by referring to the provisions of Section 263 of the Succession Act that the letters of administration may be revoked or annulled for a just cause. It is submitted that the case of the appellant would fall in explanation (b) and (c) of Section 263, in as much as the letters of administration were obtained by the respondents by concealing a material fact pertaining to the decree that was passed in favour of the appellant by the trial Court in the civil suit where a declaration was granted that the appellant is the widow of deceased Narendra. It is submitted that when the letters of

administration are secured fraudulently by making a false suggestion or by concealing a material fact, the same are liable to be revoked. It is submitted that the learned Single Judge was not justified in holding that the mere non disclosure of the factum of the pendency of the civil suit and the ex-parte decree passed therein would imply a fraudulent conduct on the part of the respondents. It is submitted that had the said fact been pointed out to the Court by the respondent before seeking the letters of administration, the letters of administration may not have been granted in favour of the respondents. It is submitted that the learned Single Judge has erroneously considered the material pertaining to the pendency of the C.B.I. case against the appellant as also the allegation made by the respondents that the appellant had secured two passports with different particulars. It is submitted that merely because the C.B.I. case is pending against the appellant, the learned Single Judge ought not have rejected the prayer made by the appellant in the misc. petition under Section 263 of the Act. It is submitted that the learned Single Judge should not have imposed costs of Rs.50,000/- on the appellant and ought not have directed the issuance of a complaint against the appellant under Section 340 read with Section 195 (1)(b) of the Code of Criminal procedure for making an enquiry.

On hearing of the learned counsel for the parties and on a perusal of the order of the learned Single Judge that is appealed against, it appears that the learned Single Judge was justified in the circumstances of the case in rejecting the misc. petition filed by

the appellant under Section 263 of the Act. The respondent no.1 had claimed to be the widow of deceased Narendra and the other respondents had claimed to be the sons and daughters. On the basis of the statements made in the application for grant of letters of administration, the letters of administration were granted in favour of the respondents. By filing the misc petition, the appellant had sought the revocation of the letters of administration on the basis of concealment of a material fact pertaining to the institution of the civil suit by the appellant for a declaration that she is the widow of deceased Narendra and that an ex-parte decree was passed in her favour. We are not in agreement with the view expressed by the learned Single Judge that the concealment did not pertain to something material to the case of the respondent. On a perusal of the Succession Act and the Rules, it appears that it would be necessary for a party seeking the letters of administration to disclose the names of all the heirs of the deceased. Even if the respondents had believed that the appellant is not the heir of deceased Narendra, it was necessary for the respondents to disclose the fact pertaining to the passing of the decree by the civil court in respect of a declaration that the appellant is the widow of deceased Narendra. The said fact ought to have been mentioned in the application made by the respondents for grant of letters of administration. Since the fact is not mentioned, it would be necessary to consider whether the non disclosure of the said fact would result in the revocation of the letters of administration granted in favour of the respondents. We find on a reading of Section 263 of the Succession Act that the power of the Court under the said section is discretionary. Since the power of the

Court under Section 263 of the Act is discretionary, it would be necessary to consider whether the learned Single Judge was justified in exercising the discretion in favour of the respondents and against the appellant while rejecting the prayer made by the appellant in the misc. petition for revocation of the letters of administration granted in favour of the respondent. In our view, in the circumstances of the case, the learned Single Judge was justified in rejecting the application made by the appellant. The learned Single Judge considered the material available on record to *prima facie* hold that the C.B.I. case was pending against the appellant and the appellant had secured two passports that were bearing different particulars. The learned Single Judge further observed that though initially the appellant had claimed that her marriage was solemnized with deceased Narendra on 20.06.1971 the said date was later on corrected to 19.06.1974. The learned Single Judge *prima facie* found that the appellant was a proclaimed offender facing criminal prosecution for fabrication and falsification of passports and identities. It was found by the learned Single Judge that the appellant was first apprehended in the year 2001 and that she had secured bail in the said matter. It was found that in her application under Section 437 of the Code of Criminal Procedure, the appellant had furnished three different addresses to the investigating officer but none of them matched with the address of deceased Narendra. Certain pleadings in the application made by the appellant before the C.B.I. authorities and in the other applications were considered by the learned Single Judge to hold that the appellant was not desirous of telling the

truth to the Court and came up with different cases on different occasions to suit her designs for the purpose of securing different reliefs and orders from the Court. *Prima facie*, on a consideration of the conduct of the appellant and also the fact that offences for fabrication and falsification of passports and identities were registered against her, it would not be proper to revoke the letters of administration, granted in favour of the respondents.

In the aforesaid set of facts, we find that the learned Single Judge has rightly exercised the discretion in rejecting the prayer made by the appellant for revocation of the letters of administration under Section 263 of the Act. There is no scope for interference with the part of the order of the learned Single Judge that rejects the prayer made by the appellant for revocation of the letters of administration granted in favour of the respondents. We however find that in the circumstances of the case, specially when several documents were tendered by the appellant before the learned Single Judge in support of her case, including the photographs, the costs of Rs.50,000/- should not have been imposed on the appellant as the dispute pertaining to the rival claims of the appellant and the respondent no.1 to be the legally wedded wife of deceased Narendra is pending in the civil court.

Since the appellant would be entitled to file a substantive appeal against the part of the order that directs the issuance of a complaint against the appellant under Section 340 read with Section 195(a)(b) of the Code of Criminal Procedure, we grant liberty to the appellant to file a separate appeal against the said order.

For the reasons aforesaid, the appeal is partly allowed. The part of the order of the learned Single Judge that rejects the petition made by the appellant for revocation of grant of letters of administration in favour of the respondents is confirmed. The part of the order of the learned Single Judge that imposes the costs of Rs. 50,000/- on the appellant is set aside. Order Accordingly. No costs.

With the disposal of the appeal, notice of motion (L) no. 2475/2017 also stands disposed of.

(Sarang V. Kotwal, J)

(Smt.Vasanti A Naik, J)