

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

934 CRA NO.159 OF 2018

HUSNODDIN SAIDODDIN
VERSUS
ISRAR AHMED MUKHTAR AHMED AND OTHER

...

Advocate for Petitioner : Mr. Shaikh Samir Ahmad
Saifuddin

Advocate for Respondent Nos. 1 to 8 : Mr. Ubale
Mahesh B.

...

CORAM : M.S.KARNIK, J.
Dated: August 22, 2019

PER COURT :-

The Revision Applicant by this Civil Revision Application has challenged the Judgment and Order dated 29.8.2018 passed by the Additional District Judge -2, Aurangabad in RCA No. 182 of 2016. The First Appellate Court allowed the appeal preferred by the respondents and remanded the matter to the Trial Court with direction to allow the present respondents to file their say to the Heirship Petition of the present applicant before the Trial Court.

2. The applicant had filed the proceedings

before the Trial Court being an application under Section 2 of the Bombay Regulation VIII of 1827 for issuance of the Heirship Certificate in favour of the applicant. Respondents were not parties to the said suit. The Trial Court by order dated 2.2.2011 granted the Heirship Certificate in favour of the applicant.

3. Before the First Appellate Court the applicant had engaged a Lawyer, but the Lawyer remained absent when the matter was called out on 10.8.2018. The Appellate Court, therefore, proceeded to hear respondents. The order passed by the Trial Court was set aside. The Appellate Court remanded the matter to the Trial Court with a direction to allow the respondents to file their say to the application filed by the present applicant and thereby proceed to deal with the matter in accordance with the law.

4. I have heard the learned counsel for the applicant as well as the learned Counsel for the Respondents. Learned Counsel for the applicant would submit that though the applicant had engaged a Lawyer he could not remain present when the matter was called out before the Appellate Court and therefore, the matter was heard without effectively hearing the present applicant. He would submit that the Trial Court had granted the Heirship Certificate in favour of the applicant by passing a detailed order. He would further submit that the respondents were not even necessary parties to the said application for issuance of Heirship Certificate. He would further submit that the respondents have filed separate proceedings for grant of Heirship Certificate which are pending.

5. The learned counsel for the respondents on the other hand supported the order of the Appellate Court. The learned counsel for the respondents would

submit that what the Appellate Court has done is only to remand the matter back to the Trial Court thereby enabling the respondents to file their say to the application. According to him, no prejudice would be caused to the applicant as the inquiry to grant Heirship Certificate would still proceed after hearing the present respondents.

6. I heard the learned counsel. It is the matter of record that the respondents were not parties to the heirship application filed by the applicant before the Trial Court. The Trial Court on merits has granted the Heirship Certificate in favour of the applicant. The inquiry contemplated under the Bombay Regulation Act is limited to grant of Heirship Certificate and nothing more. Though the applicant had engaged a Advocate to represent him before the Appellate Court, his Advocate failed to remain present on the date of hearing. I find merit in the submission of the learned counsel for the applicant

that an opportunity should be given to the applicant to contest the appeal filed by respondents before the First Appellate Court.

7. Considering the explanation given by the applicant in this petition as regards the reason for his Advocate's absence for some genuine reason, in my opinion, the present Revision petition deserves to be allowed. Respondents can be adequately compensated with costs of Rs. 5,000/-. The appeal therefore, is remitted back to the Appellate court.

8. The impugned order passed by the Appellate Court is set aside. The appeal to be heard on its own merits and in accordance with the law. The applicant to co-operate with the Appellate Court and should not seek unnecessary adjournments.

9. The applicant to pay cost of Rs. 5,000/- to the respondents within a period of 2 weeks from

today.

(**M.S.KARNIK**)
JUDGE

mahajansb/