

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 113 of 2018**

1. Smt. Savitri Devi W/o Late Ramadhar Adile Aged About 61 Years R/o Village - Papartarai, Tahsil - Kota, District Bilaspur, Civil And Revenue District - Bilaspur, Chhattisgarh.
2. Vijay Kumar S/o Late Ramadhar Adile Aged About 40 Years R/o Village - Papartarai, Tahsil - Kota, District Bilaspur, Chhattisgarh. --- (Plaintiffs)

---- Petitioner**Versus**

1. Smt. Agasiya Bai W/o Ramadhar Adile Aged About 48 Years R/o Village - Ghonghadih, Tahsil - Ganiyari, District - Bilaspur, Chhattisgarh.
2. Vimal Adile S/o Ramadhar Adile Aged About 30 Years R/o Village - Ghonghadih, Tahsil - Ganiyari, District - Bilaspur, Chhattisgarh.
3. Vimla Bai D/o Ramadhar Adile Aged About 24 Years R/o Village - Ghonghadih, Tahsil - Ganiyari, District - Bilaspur, Chhattisgarh.
4. Sarswati Bai D/o Ramadhar Adile Aged About 20 Years R/o Village - Ghonghadih, Tahsil - Ganiyari, District - Bilaspur, Chhattisgarh.
5. The Block Education Officer Tahsil -Takhatpur, District - Bilaspur, Chhattisgarh.
6. The District Education Officer Bilaspur, District - Bilaspur, Chhattisgarh.

---- Respondent

For Petitioners : Shri Manoj Kumar Sinha, Advocate
For Respondents 5 & 6 : Shri Vaibhav Agrawal, Panel Lawyer.

Hon'ble Shri Deepak Kumar Tiwari, J**Order On Board****20/10/2021 :**

1. Heard on IA No.1/2018, application for condonation of delay in filing the instant revision.
2. The present Revision has been preferred against the order dated 13.5.2014 passed by the 4th Additional District Judge, Bilaspur in Misc. Civil Appeal No.29/2014 whereby the learned Additional District Judge allowed the appeal and set aside the order dated 28.1.2013 passed by the 4th Civil Judge, Class-1, Bilaspur in Succession Case No.23/2011.
3. There is delay of 1493 days in preferring the present revision. Perused the grounds raised in the application for condonation of delay.
4. Facts of the case, in brief, are that the applicants had filed an application under Section 372 of the Indian Succession Act for grant of succession certificate, as there was dispute regarding legal heirs of late Ramadhar Adile, who was the husband of applicant No.1 and father of applicant No.2. It is submitted that the applicant No.1 is the legally married wife and from the wedlock, the applicant No.2 was born. The father of applicant No.2 late Ramadhar was the Government employee and was working as Teacher in the School Education Department. He died in harness on 27.11.2005. In his service book, the name of applicant No.1 was recorded as nominee. The respondent No.1 is the second wife of late Ramadhar Adile and respondents No.2 to 4 are children of late Ramadhar. The respondents No.1 to 4 filed reply to the said application stating that Ramadhar died in harness on 27.11.2005. It was stated that Chhudi marriage was performed with respondent No.1 and from the wedlock, respondents No.2 to 4 were born. It was also stated that in the service book of Ramadhar, the names of respondents No.1 to 4 were recorded. The application for inserting relevant entries in the service

book was made by Ramadhar. The learned trial Court, after hearing the parties, allowed the application and held that the applicants are successor of late Ramadhar and they are entitled to get the amount of retiral dues. Against which the respondents filed an Appeal before the District Judge, Bilaspur wherein notices were issued to the applicants and they appeared before the appellate Court. After hearing the parties, the Appellate Court passed the impugned order holding that there was no occasion to grant succession, as there was no demand by the Department. It was also held that the entire dues of late Ramadhar was paid to the respondents No.1 to 4.

5. Admittedly, there is delay of 1493 days in preferring this Revision. The grounds raised in the application for condonation of delay are not candid and convincing. Since the law of limitation being a substantive law, the appeals are to be filed within a time limit. Filing an appeal within a period of limitation is the rule and condonation of delay is an exception. Thus, while condoning the delay, the Courts must be cautious and only on genuine reasons, the Courts are empowered to condone the delay. The power of discretion to condone the delay is to be exercised judiciously and by recording reasons. The reasons furnished for condonation of delay must be candid and convincing. Therefore, the condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise. In the event of condoning the huge delay in a routine manner, the Courts are not only diluting the law of limitation but unnecessarily encouraging this kind of lapses. Therefore, reasons which are all acceptable alone must be a ground for condonation of delay, and flimsy, false and casual

reasons cannot be taken for the purpose of condoning the huge delay.

6. Apart from above, a succession certificate can be granted in favour of any person. It may be granted to an heir or a nominee. By reason of grant of such certificate, a person in whose favour succession certificate is granted becomes a trustee to distribute the amount payable to the deceased to his heirs and legal representatives. He does not derive any right thereunder. The succession certificate merely enabled him to collect the dues of the deceased. No status was conferred on him thereby. It did not prove any relationship between the deceased and the applicant. The scope of inquiry and procedure with respect to the issuance of succession certificate is provided under Section 373 of the Indian Succession Act, 1925. The procedure laid down by the section is summary procedure which contemplates a summary inquiry into the matter of the application. The Court has to consider if there is good ground for entertaining the application and the Court should try to confine itself to issue of right to the certificate and whether the applicant is the representative of the deceased to whom the debt was due. It is well settled law that where the complicated questions of facts and law are involved, it should not be decided in summary manner. While granting succession certificate, the Court has to only determine whether the applicant is proper person to be clothed with the representative character and the Court has to satisfy itself that the person to whom it grants such certificate has got a prima facie right for such a ground.
7. The learned Appellate Court observed that in the succession application, it was not mentioned that the amount is to be received from the

concerned department and learned counsel for the applicant fairly admitted that presently no amount is deposited with the department. It is established law that succession certificate has to be issued with respect to any debt or security and that a sum of money which is certainty and in all events payable is a debt.

8. In the facts and circumstances of the present case, the application (IA No.1/2018) under Section 5 of the Limitation Act has been filed with an inordinate delay of 1493 days. Therefore, the application filed by the applicant fails to establish any sufficient cause. Hence, this Court is of the view that the application deserves to be and is hereby rejected.
9. Consequently, the Revision is also dismissed.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve