

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

**78 FIRST APPEAL NO.28 OF 2021
WITH CA/520/2021 IN FA/28/2021**

**SYED ABDUL WAHAB S/O SYED ABDULLAH
VERSUS
STATE OF MAHARASHTRA THR COLLECTOR, AURANGABAD AND ORS**

...
Advocate for Appellant : Shri Hiwrekar S.D.
Advocate for Respondent Nos. 5 to 8 : Shri V. R. Patil, Shri Vijayendra
Shyamrao Ganorkar and Shri Subhash V. Mundhe
...

CORAM : M. G. SEWLIKAR, J.

DATE : 15th FEBRUARY, 2021.

PER COURT :

1. Heard.
2. Shri Patil, learned counsel for the respondent Nos. 5 to 8 submits that appeal is not maintainable as the Succession Certificate is granted by the learned Civil Judge Senior Division, Aurangabad. Therefore, by virtue of provisions of Section 388 (1) &(2) of the Indian Succession Act, appeal ought to have been preferred before the learned District Judge.
3. Shri Hivrekar, learned counsel for the appellant states that in terms of Section 384 of the Indian Succession Act, appeal has to be preferred before the High Court.
4. On going through the provisions of Section 384 and 388 of the Indian Succession Act, it appears that the appeal is maintainable

before this Court under Section 384 of the Indian Succession Act, if the order of granting or refusing succession certificate is passed by the District Judge.

5. In terms of Section 388 (1) of the Indian Succession Act, the State Government is empowered to invest with any inferior Court in grade to a District Judge with power to exercise the functions of a District Judge under this part by notification in official gazette.

6. Sub Section (2) of Section 388 of the Indian Succession Act provides that against the order of such Court inferior in grade to the District Judge appeal shall be preferred to the District Judge. In view of this, this Court finds that appeal will have to be preferred before the District Judge as the order of granting succession certificate is passed by the Civil Judge (S.D.).

7. This view is fortified by the judgment of the Hyderabad High Court in **Re: Pasumarthi Srinivas - AIR 2017 Hyderabad 65**.

8. In view of this papers be returned to the appellant for presentation before the appropriate Court.

9. Shri Hivrekar, learned counsel for the appellant submitted that the time consumed in prosecuting the litigation before this Court be directed to be excluded in view of section 14 of the Limitation Act.

10. Such direction cannot be given.

11. The appellant can agitate this point before appropriate forum.

12. Registry to return the papers to the appellant forthwith.
13. With these directions, appeal is disposed of.

(M. G. SEWLIKAR)
JUDGE

mahajansb/