

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

CIVIL APPLICATION NO.11542 OF 2021 IN FAST/2505/2020

**GODAVARI ASHRUBA BHARTI
VERSUS
KASHIBAI ASHRUBA BHARTI AND ANOTHER**

....
Mr. K.J. Suryawanshi, Advocate for the Applicant
....

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 14th JANUARY, 2022

PER COURT:-

1. This Court vide its order dated 22.10.2021 has expressed the view that this appeal lies to the District Court in relation to grant or refusal of succession certificate. Mr. Suryawanshi, learned counsel for the appellant / applicant has taken time to take instructions in the matter.

2. Accordingly, heard Mr. Suryawanshi, learned counsel for the appellant / applicant regarding the maintainability of this appeal.

3. According to Mr. Suryawanshi, the learned Joint Civil Judge, Senior Division, Majalgaon was pleased to reject the application for grant of succession certificate while deciding Misc.

Civil Application No.218 of 2015. He submits that in view of section 384 of the Indian Succession Act, 1925, the appeal lies to the High Court. Mr. Suryawanshi, learned counsel for the appellant / applicant also relied upon the citation in case of ***Smt. Nola Jonathan Ranbhise Vs. The Union of India and others*** reported in ***2014 (4) ALL MR 181 (Bombay)***.

4. By taking help of the above said citation, Mr. Suryawanshi vehemently submitted that this appeal is maintainable before this Court, which has been preferred against the order of refusal of grant of succession certificate by the Joint Civil Judge, Senior Division, Majalgaon.

5. Having regard to the argument advanced by Mr. Suryawanshi, learned counsel for the appellant / applicant, I have gone through the citation in case of ***Smt. Nola Jonathan Ranbhise Vs. The Union of India and others*** (supra) very carefully. I have also gone through the provisions of Section 384 of the Indian Succession Act, 1925.

6. It is an admitted position that the appellant / applicant has applied for succession certificate by taking aid of Section 372 of the Indian Succession Act, 1925 before the Joint Civil Judge,

Senior Division, Majalgaon. That application was contested by the opposite party. The learned Joint Civil Judge, Senior Division, Majalgaon was pleased to reject the application for grant of succession certificate by passing the impugned order.

7. The question is what would be the forum of the appeal. It is not only necessary to refer Section 384 of the Indian Succession Act, 1925, but also, equally to refer Section 388 of the said Act, which is also important to focus light about the appellate forum. Section 388 of the Indian Succession, which reads as under:-

“ 388. Investiture of inferior courts with jurisdiction of District Court for purposes of this Act.—

(1) The State Government may by notification in the Official Gazette, invest any court inferior in grade to a District Judge with power to exercise the functions of a District Judge under this Part.

(2) Any inferior court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior court as if it were a District Judge:

Provided that an appeal from any such order of an inferior court as is mentioned in sub-section (1) of

section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

(3) An order of a District Judge on an appeal from an order of an inferior Court under the last foregoing sub-section shall, subject to the provisions as to reference to and revision by the High Court and as to review of judgment of the Code of Civil Procedure, 1908 (5 of 1908), as applied by section 141 of that Code, be final.

(4) The District Judge may withdraw any proceedings under this Part from an inferior court, and may either himself dispose of them or transfer them to another such court established within the local limits of the jurisdiction of the District Judge and having authority to dispose of the proceedings.

(5) A notification under sub-section (1) may specify any inferior court specially or any class of such courts in any local area.

(6) Any Civil Court which for any of the purposes of any enactment is subordinate to, or subject to the control of, a District Judge shall, for the purposes of this section, be deemed to be a court inferior in grade to a District Judge.”

8. Section 388 of the Indian Succession Act, 1925, more particularly proviso, is applicable in this case. In the present case, an appeal would lie before the District Court since the inferior Court to District Court has decided the application for succession certificate. The impugned order can be challenged before the District Court in view of Section 388 of the Indian Succession Act, 1925.

9. So far as the citation relied upon by Mr. Suryawanshi, learned counsel for the appellant / applicant in case of ***Smt. Nola Jonathan Ranbhise Vs. The Union of India and others*** (supra) is concerned, in the cited case, the applicant had applied for probate and not for succession certificate. The provisions of probate are given in part IX of the Indian Succession Act, 1925. Whereas, the provisions for the grant of succession certificate are provided in part X of the Indian Succession Act, 1925. There is a distinguishable feature from the proceedings of probate and proceedings of succession certificate. The citation relied upon by Mr. Suryawanshi throws light on the probate proceedings. The facts and circumstances of the cited case and the facts and

circumstances of the case in hand are quite distinguishable and not any way helpful to the appellant / applicant.

10. Having regard to the above reasons and discussion and the legal position is made clear under Sections 384 and 388 of the Indian Succession Act, 1925, the present appeal is not maintainable before this Court. The remedy of appeal lies before the District Court. As such, there is no propriety to decide the application for condonation of delay

ORDER

(i) The applicant / appellant is at liberty to file an appeal against the order of refusal to grant succession certificate before the District Court.

(iii) The District Judge shall consider the time spent in prosecuting the present application for condonation of delay alongwith the appeal before this Court and shall not be an impediment in view of Section 14 of the Limitation Act, 1963.

[SHRIKANT D. KULKARNI]
JUDGE

S.P. Rane