

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION 7105 OF 2013
WITH
INTERIM APPLICATION (ST.) 15265 OF 2022**

Prabhakar Vasudev Zanzure	...	Petitioner
<i>Versus</i>		
Haribhau Shankar Mali	...	Respondent

Mr. Sanjay D. Thokade for the Petitioner.
Mr. Tushar Sonawane i/by Mr. Prashant S. Hagare a/w Sheetal Gaikar
for the Respondent 1.

**CORAM: ROHIT B. DEO, J.
DATE : 7th JULY, 2022**

P.C. :-

1. The short question involved is whether the limitation to seek heirship certificate under the provisions of the Bombay Regulation VIII of 1827 (for short 'Bombay Regulation') is triggered *ipso facto* from the death of the person *qua* whose estate such certificate is sought.

2. The petitioner succeeded in obtaining heirship certificate *qua* the estate of deceased Mrs. Geetabai, by and under order dated 26th July, 2010 rendered by learned Civil Judge, Senior Division, Barshi in M.A. 15 of 2009.

3. The respondent herein challenged the grant of heirship certificate in Civil Miscellaneous Appeal 114 of 2010 which is allowed by the learned Ad-hoc District Judge-3, Solapur vide judgment dated 7th March, 2013.

4. The learned Appellate Judge held that the application preferred

under the provisions of the Bombay Regulation was time barred. The learned Appellate Judge assumed that Article 137 of the Indian Limitation Act, 1963 (for short 'Limitation Act') would apply and the limitation is three years. To that extent, the learned Appellate Judge is right. However, the learned Appellate Judge further held that the starting point for the limitation is the date of death. The learned Appellate judge reasons that the right to apply for the legal heirship certificate accrued to the petitioner on the death of Mrs. Geetabai.

5. In my considered view, the issue involved is not *res integra*.

6. In ***Vasudev Daulatram Sadarangani v/s. Sajni Prem Lalwani, AIR 1983 BOMBAY 268***, a learned Single Judge has held that the assumption that the right to apply for probate, letters of administration or succession certificate necessarily accrues after the date of the death of the deceased, is unwarranted. The learned Judge further articulated that right would accrue when it becomes necessary to apply and such occasion may not arise within the period of three years from the date of death.

7. The learned counsel for the respondent would however invite my attention to the decision of the Apex Court in ***Ramesh Nivrutti Bhagwat v/s. Dr. Surendra Manohar Parakhe, (2010) 17 SCC 284***. The issue considered was whether the application for cancellation of the letters of administration was barred by limitation. The Apex Court enunciates that since there is no period of limitation prescribed under the provisions of Succession Act 1925, Article 137 of the Limitation Act would apply. The Apex Court further articulated that considering that all concerned were aware of the letters of administration, the

petition for revocation which was preferred after period of three years was time barred.

8. In my considered view, the decision of the Apex Court in case of **Ramesh Nivrutti Bhagwat** (supra) does not take the case of the respondent any further. While Apex Court has held that the right to apply for revocation of the letters of administration would accrue from the date of notice of grant of the letters of administration, insofar as the right to apply for heirship certificate is concerned, the occasion to seek heirship certificate may not necessarily arise within prescribed period of limitation of three years and the limitation shall stand triggered only if it is clearly established that the right to apply for heirship or letters of administration or probate, clearly accrued, in the factual matrix. The decision of the learned Single Judge in case of **Vasudev Daulatram Sadarangani** (supra), with which I respectively agree, is not in any manner diluted by the enunciation by **Ramesh Nivrutti Bhagwat** (supra).

9. The order impugned is unsustainable and is set aside.

10. The petition is allowed in the aforestated terms.

11. Prayer for stay stands rejected.

12. Pending Civil Application, if any, shall stand disposed of.

[ROHIT B. DEO, J.]

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