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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4419 OF 2022

Syed Abdul Wahab Syed Abdullah Through GPA PETITIONER
Syed Kazim Hameed Syed Abdul Hameed

VERSUS

The State of Maharashtra Through Collector,
Aurangabad and Others RESPONDENTS

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Mr. S. D. Hiwrekar, Advocate for the petitioner
Mr. S. R. Yadav – Lonikar, AGP for respondent - State
Mr. Sujeet G. Karlekar, Advocate for respondent No.2
Mr. S. W. Mundhe, Advocate for respondent No.4
Mr. S. V. Mundhe, Advocate for respondents No.5 to 8

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th JUNE, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, takes exception to the order dated 5th February, 2022 passed by learned Ad Hoc District Judge – 6 Aurangabad below Exhibit-1 in Civil M.A. No. 209 of 2021, thereby rejecting the said application filed by the petitioner, seeking leave to file appeal against the order passed in MARJI No. 197 of 2020.
2. Facts, in nutshell, which are necessary for the decision of the present petition, are as follows:

The petitioner claims to be legal heir of Nawab Mir Yusuf Ali Khan Salar Jung Bahadur III, Hyderabad. Munirrunissa Begum - Mother of respondents No.5 to 8 had earlier filed MARJI No. 812 of 2002 seeking heirship certificate under section 372 of the Indian Succession Act, 1925 (hereinafter "the said Act"), claiming to be heir of Nawab Salarjung Bahadur. The petitioner filed objection in the said proceedings. On account of death of Munirrunissa Begum – mother of respondents No.5 to 8, the said proceedings abated. The said abatement order was set aside at the instance of respondents No. 5 to 8 and MARJI No. 812 of 2002 was restored. The petitioner challenged the said order, by filing Writ Petition No.2856 of 2016, which was allowed by this Court on 22nd March, 2016 and the abatement order was upheld.

3. After 4 years, respondents No.5 to 8 filed MARJI No. 197 of 2020 under section 372 of the said Act, seeking succession certificate, claiming to be legal heirs of Nawab Salarjung Bahadur, without making the petitioner party to the said proceeding. The said application is allowed and heirship certificate is granted in favour of respondents No. 5 to 8.

4. The petitioner challenged the said order, initially by filing First Appeal No. 28 of 2021 in this Court. Considering the provisions of section 388 (1) and (2) of the said Act, this Court

held that appeal is maintainable before District Court, under section 384 of the said Act. The petitioner, therefore, approached the District Court, by filing appeal. According to the petitioner, the Registry of the District Court raised an objection that the petitioner was not party in MARJI No. 197 of 2020, therefore, the appeal filed by him is not maintainable. The petitioner, therefore, filed Civil MA No. 209 of 2021 under section 96 of the Civil Procedure Code, seeking leave to file appeal. The said application is rejected by the District Court. Hence, the present writ petition.

5. Learned advocate for the petitioner submits that in fact, there was no occasion for the petitioner to file application seeking leave to file appeal, however, by way of abundant precaution, the said application was filed by the petitioner, which is erroneously rejected by the Appellate Court. He, therefore, submits that the impugned order be quashed and set aside and the Appellate Court be directed to register the appeal and consider the same on its own merits.

6. Mr. Mundhe, learned advocate for respondents No.5 to 8, on the other hand, strenuously opposed the petition contending that the petitioner is a class -III heir and the respondents are class – I heirs of Nawab Mir Salar Jung Bahadur and hence they

have been rightly granted succession certificate by the Trial Court. Further contention is that one of the nephew of the deceased has already filed proceedings under section 383 of the said Act seeking revocation of the succession certificate granted in favour of the respondents and the petitioner may prosecute the same remedy. He, therefore, submits that there is no merit in the writ petition and the same may be dismissed.

7. Heard learned advocates for the parties at length. Perused the memo of writ petition, annexures, impugned order and the replies filed on behalf of the respondents.

8. Before advertng to the rival submissions, it is apposite to consider relevant provisions of the said Act :

“383. Revocation of certificate.- A certificate granted under this Part may be revoked for any of the following causes, namely:-

(a) that the proceedings to obtain the certificate were defective in substance;

(b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;

(c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;

(d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by competent Court in a suit or

other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked.

384. Appeal.—

(1) Subject to the other provisions of this Part, an appeal shall lie to the High Court from an order of a District Judge granting, refusing or revoking a certificate under this Part, and the High Court may, if it thinks fit, by its order on the appeal, declare the person to whom the certificate should be granted and direct the District judge, on application being made therefor, to grant it accordingly, in supersession of the certificate, if any, already granted.’

(2) An appeal under sub-section (1) must be preferred within the time allowed for an appeal under the Code of Civil Procedure, 1908 (5 of 1908)

(3) Subject to the provisions of sub-section (1) and 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, an order of a District Judge under this Part shall be final.”

388. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act -

(1)

(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 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”

9. Admittedly, this Court, in First Appeal No. 28 of 2021, after considering the provisions of sections 384 and 388 of the said Act, has observed :

“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.)”

10. Pursuant to the above order, the petitioner preferred appeal under section 384 of the said Act, which is maintainable before the District Court and the objection raised by the Registry of the District Court that since the petitioner was not party to the proceedings of MARJI No. 197 of 2020, appeal cannot be maintainable at his instance, is misconceived.

11. Section 384 of the said Act provides statutory remedy of appeal against grant, refusal or revocation of succession certificate and in appeal, the Appellate Court can declare the person to whom the certificate should be granted. In view of the plain language used in section 384 of the said Act and the

observations made by this Court in paragraph No.6 in the order passed in First Appeal No. 28 of 2021, quoted above, the appeal filed by the petitioner before the District Court, under section 384 of the said Act, is maintainable and the same ought to have been registered by the Registry.

12. There appears substance in the contention of the petitioner that under erroneous belief, he filed Civil M.A. No. 209 of 2021 under section 96 of the Civil Procedure Code, for leave to file appeal. Learned District Judge has rejected the application filed by the petitioner seeking leave to file appeal, by relying on section 96 of the Civil Procedure Code and holding that since the order passed in MARJI No. 197 of 2020, thereby issuing succession certificate is not a decree and, therefore, the appeal filed by the petitioner is not maintainable. Section 96 of the Civil Procedure Code is not applicable to the facts of the present case. Appeal is filed by the petitioner under section 384 of the said Act. There is no reference of provisions of section 384 of the said Act in the impugned order. The impugned order, since is passed by ignoring section 384 of the said Act as well as the observations of this Court in First Appeal No. 28 of 2021, the same is vitiated on account of non application of mind. The learned District Judge, while holding the appeal not

maintainable, has failed to exercise jurisdiction vested in him.

13. The submission of the learned advocate for the respondents that since another nephew of the deceased has filed proceedings before Trial Court under section 383 of the said Act, for revocation of the succession certificate, the petitioner ought to have filed similar proceedings and the respondents should not be made to attend both the proceedings, cannot be accepted for the simple reason that if the petitioner has two remedies and if he elects one of them, he is entitled to prosecute the same. In the present case, the petitioner has elected the remedy of filing substantive appeal under section 384 of the said Act, which is permissible in law.

14. For the aforestated reasons the impugned order cannot be sustained. Hence, the following order.

ORDER

- I. Writ petition is allowed.
- II. Impugned order order dated 5th February, 2022 passed by learned Ad hoc District Judge-6, Aurangabad below Exhibit-1 in Civil MA No. 209 of 2021 is hereby quashed and set aside.

III. Appellate Court is directed to register and consider the appeal on its own merits and decide the same within a period of one year from the date of receipt of writ of this order.

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[NITIN B. SURYAWANSHI]
JUDGE