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

CIVIL REVISION APPLICATION NO.481 OF 2023

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Hiraman Shankar Khanavkar & Ors. ... Applicants

V/s.

Nitin Anant Khanavkar & Ors. ... Respondents

Mr. Surel S. Shah i/by Mr. S.S. Redekar for the applicants.

Mr. M.A. Khan with Ms. Dipti Mehta & Mr. Afrin Shaikh for respondent Nos.1 to 13.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 10, 2023

PC.:

1. This civil revision application takes exception to the order dated 3 May 2023 passed by the Joint Civil Judge Senior Division, Panvel, in Civil Miscellaneous Application No.528 of 2022, rejecting the application filed under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908 ("CPC" for short).

2. In 2002, the applicants filed Civil Miscellaneous Application No.384 of 2002 for a grant of an heirship certificate under the provisions of the Bombay Regulation VIII of 1827 ("the said Regulation" for short). On 15 January 2004, the Competent Court granted heirship certificates to the applicants under the provisions of the said Regulation.

3. On 16 March 2022, the respondents filed Civil Miscellaneous Application No.528 of 2022 before the Civil Judge Senior Division, Panvel, seeking revocation of the heirship certificate dated 15 January 2004.
4. The applicants applied to Order 7 Rule 11(a) and (d) of the Code of Civil Procedure, 1908. The Trial Court, by the impugned order, rejected the application on the ground that necessary facts about fraud were pleaded in the application, and the application was filed after getting knowledge of the heirship certificate.
5. Learned advocate for the applicants submitted that the applicants were aware of the grant of heirship certificate at least in the year 2014; therefore, the application for revocation is barred by limitation. There is no cause of action for filing an application for revocation. He submitted that in view of the provisions of Section 141 of the Code of Civil Procedure, 1908, the provisions of the Code of Civil Procedure, 1908, apply to the proceedings under the said Regulation. In support of his contentions, he relied on judgment in the case of **ITI Ltd. v. Siemens Public Communications Network Ltd.** reported in (2002) 5 SCC 510, **Murlidhar Datoba Nimanka & Ors. v. Harish Balkrishna Latane & Ors.** reported in 2003 (4) Mh.L.J. 196, **Babubhai Muljibhai Patel v. Nandlal Khodidas Barot & Ors.** reported in (1974) 2 SCC 706, and **Kusum Chandrakant Shankardas & Ors. v. Rajeshri Chandrakant Shankardas** reported in 2018 (1) Mh.L.J. 681.
6. Per contra, the learned advocate for the respondents

submitted that the applicants set out necessary grounds for revocation of the heirship certificate. The applicants have suppressed the fact that they have no right to the property in question, and, therefore, the application disclosed the cause of action. According to him, an application under Order 7 Rule 11 of the CPC is not maintainable as the proceedings for revocation under the provisions of the said Regulation cannot be termed as a civil suit. In support of his contention, he relied on the judgment in the case of **Nalini Navin Bhagwati v. Chandravan M. Mehta** reported in (1997) 9 SCC 689.

7. Rival contentions arise for consideration. The question arises whether the provisions of Order 7 Rule 11 of the CPC apply to revocation proceedings under the said Regulation. To adjudicate the said issue, it is necessary to set out the purpose of enacting the said Regulation. The said Regulation was enacted to provide formal recognition of heirs, executors and administrators and for appointment of administrators and managers of property by the Court. It was thought desirable that the heirs of the deceased person should be allowed to assume management of the estate without interference from the Court of Justice unless their right is disputed and in order to give confidence to the person in possession of the estate of the deceased, right is conferred on them to obtain a certificate of heirship from the Zilla Court.

8. The Regulation provides that if any heir is desirous of having his right formally recognized by the Court, it shall issue a proclamation in the form contained in Appendix-A to the said Regulation indicating all persons disputing rights of the claim to

appear in the Court. If no objection is raised to the application, the Court shall proceed to decide the application on merits and, upon being satisfied, grant an heirship certificate to the applicant.

9. By virtue of Section 390 of the Indian Succession Act, 1925, Section 383 makes Chapter X of the Act applicable to the heirship certificate granted under the said Regulation. Section 383 of the Indian Succession Act, 1925 provides for revocation of any succession certificate granted under Chapter X where the proceedings to obtain such certificate were defective in substance, i.e. certificate obtained by fraud by making false suggestion or by suppression of material fact.

10. Since Chapter X of the Indian Succession Act, 1925 applies to the certificate issued under the said Regulation, the judgment in the case of **Nalini Navin Bhagwati** (supra) needs to be applied. The Supreme Court, in the said case, was considering an application under Section 263 of the Indian Succession Act, 1925, for revocation of probate or letters of administration. The Supreme Court held that the procedure required under Section 295 need not be adopted for dismissal of application under Section 263 for revocation of probate or letters of administration. An application to revoke probate or letters of administration would be treated as a miscellaneous application. It may be disposed of on the fact-situation in an appropriate case either summarily or after recording evidence. The burden will be on the applicant to prove the facts to revoke probate or letters of administration. Under these circumstances, it is not necessary that the application for revocation of probate or letters of administration would be treated

as a suit contemplated under Section 295 of the Indian Succession Act, 1925. The provisions of Order 7 Rule 11 of the CPC apply to the plaint filed as per Order 7 of the CPC.

11. Though Section 141 of the CPC applies to all civil proceedings, the procedure applicable is "as far as it can be made applicable". For applying Section 141, it is necessary to consider the expression "as far as it can be made applicable". This expression makes it clear that in applying various provisions of the Code to the proceedings other than suit, the Court must consider the nature of those proceedings and the relief sought. The provisions of the said Regulation make it clear that a certificate issued under the said Regulation confers no right to the property but indicates the person who, for the time being, is in legal management thereof. It also makes it clear that the grant of such a certificate shall not finally determine or injure the right of any person, and the Zilla Court can annul such certificate upon proof that another person has the preferable right. The Regulation further makes it clear that refusal of a certificate by the Judge shall not finally determine the rights of the persons whose application is refused, and it shall be open for such person to institute a civil suit to establish his claim.

12. It also needs to be stated that Section 141 applies to the extent of procedure under the Code to proceedings other than those in the civil Court. It is to be noted that Sec. 141 speaks of procedure. What is made applicable to all proceedings in a Court of Civil jurisdiction is the procedure provided in the Code with regard to suits. What is to be underlined is that the provisions of

Section 141 of the CPC, cannot be applied except to procedural matters. By virtue of Section 141 of the CPC, the substantive right to apply for revocation cannot be taken away, having resorted to Order 7 Rule 11 of the CPC. Section 141 does not make the whole of the procedure in regard to suits applicable to proceedings in a suit of civil jurisdiction. Such procedure applies only as far as it can be made applicable.

13. In so far as the judgment in the case of **ITI Limited** (supra) is concerned, there cannot be a dispute about the proposition of law laid down by the Apex Court that the provisions of CPC would apply to the proceedings governed by the Arbitration and Conciliation Act, 1996 unless there is expressed exclusion. However, considering the scheme of the said Regulation, the judgment in the case of **ITI Limited** is inapplicable.

14. The judgment in the case of **Babubhai Muljibhai Patel** (supra) is in relation to the applicability of the provisions of the Code of Civil Procedure, 1908, to the writ petition under Article 226 of the Constitution of India. It is held that considering the object of the writ petition, it is different from the suit, and it would be incorrect to assimilate and incorporate the procedure of a suit in the proceedings of a writ petition under Article 226 of the Constitution of India.

15. In the judgment in **Murlidhar Datoba Nimanka** (supra), this Court was considering the applicability of CPC to the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960. It is held that the provisions of

the Code of Civil Procedure, 1908, do not apply to the proceedings before the Cooperative Court when specific provisions are contained under the provisions of the Maharashtra Cooperative Societies Act, 1960. However, penal provisions, along with Order 39 Rule 11 of the Code of Civil Procedure, 1908, cannot be attracted to the disputes under Section 91 of the Maharashtra Cooperative Societies Act, 1960.

16. Considering the reasons stated above, in my opinion, it is held that the provisions of Order 7 Rule 11 of the CPC do not apply to the application for revocation under the provisions of the said Regulation and Chapter X of the Indian Succession Act, 1925.

17. There is no merit in the civil revision application. The civil revision application is rejected. However it is made clear that rejection of revision shall not preclude applicants from raising contentions raised in the revision before the trial court at the time of final disposal of revocation application. No costs.

(AMIT BORKAR, J.)