



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.741 OF 2019

Smt. Lakshmi wd/o Januji Wankhade and another .Vs. Smt. Saraswati Wd/o Januji Wankhade and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri R.M. Tiwari, Advocate for petitioners.
Shri V.B. Bhise, Advocate for respondents.

CORAM : ANIL S. KILOR, J.

DATED : 12/09/2023

1. Heard.
2. The order dated 30.10.2018 passed by the Civil Judge Senior Division, Akola dismissing the proceeding filed by the petitioners for grant of heirship certificate, is under challenge in this writ petition.
3. The learned counsel for the petitioners has pointed out the order below Exh.1 dated 05.04.2017 and submits that, the direction issued to comply Section 29 of the Bombay Court Fees Act, 1959, are contrary to law, as the said compliance can be made within six months after issuance of heirship certificate and there is no mandatory provisions to comply the same before issuance of heirship certificate.

4. It is submitted that, since the petitioners could not get sufficient opportunity, it could not be pointed out to the learned trial Court.

5. The learned counsel for the respondents are opposing the present writ petition.

6. Considering the fact that, the proceeding is in respect of issuance of heirship certificate, I am of the opinion that, the petitioners shall get one opportunity to satisfy the Court whether such compliance is necessary at the prior stage of issuance of heirship certificate. Accordingly, I pass the following order:

- i) The writ petition is **disposed of** in above terms.
- ii) The order dated 30.10.2018 passed by the Civil Judge Senior Division, Akola in M.J.C. No.670 of 2015, is hereby quashed and set aside.
- iii) Liberty is granted to the petitioners to file the necessary application as permissible under the law in respect of compliance of Section 29 of the Bombay Court Fees Act.
- iv) On moving of such application, the learned trial Court shall consider the same in

accordance with law without influenced by the observations made in the order dated 05.04.2017.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE