IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
**WRIT PETITION NO.786 OF 2023**
Mr. Meghan s/o Jayant Patwardhan
-vs-
State Bank of India, through its Regional Manager, Nagpur and another.

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| Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's Orders. |
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Shri S.A.Bramhe, Advocate for petitioner.
Shri Bhushan Mohta, Advocate for respondents.

**CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.**
**DATE : 11th August, 2023.**

P. C.

Heard.

2. The challenge raised in this writ petition is to the communication dated 03.03.2023 that has been issued by the second respondent-State Bank of India, Badkas Chowk branch, Nagpur, to the petitioner by which the petitioner has been called upon to obtain a probate to enable him to receive the amounts to which he claims entitlement in the capacity as nominee.

3. According to the petitioner, one Dr. Mangala Ketkar executed a Will during her lifetime on 17.12.2021. The said Will was duly registered. Said Dr. Mangala Ketkar expired on 31.12.2021. In accordance with the said Will, her properties were intended to be transferred to persons named therein. It was further stated that in case there was no nomination made for any movable properties, the amount in question was liable to be paid to the petitioner. On the strength of the said registered Will, the petitioner approached the State Bank of India by his letter dated 18.01.2022 seeking transfer of amounts

standing in the Savings Bank Account as well as in the Public Provident Fund Account in his name. Alongwith the said communication he submitted a copy of the registered Will Deed as well as the Death Certificate. The State Bank of India issued the communication dated 03.03.2022 requiring the petitioner to obtain a probate certificate to entitle him to receive the said amounts. Being aggrieved, the aforesaid communication has been challenged by the petitioner.

4. Shri S.A.Bramhe, learned counsel for the petitioner by relying upon the decision in *Jyoti w/o Jagdish Singhai vs. State of Maharashtra* ***[1979 Mh.L.J.308]*** submitted that the probate was not necessary with regard to a Will made by the deceased, if it was not covered by Section 57(a) and (b) of the Succession Act, 1925 (for short, the Act of 1925). Since the registered Will was not covered by the aforesaid sub-clauses and was in fact covered by sub-clause (c) of Section 57 of the Act of 1925, there was no reason for the State Bank of India to require the petitioner to obtain probate of the Will Deed. The requirement of probate as per Section 213 of the Act of 1925 was only in the Presidency Towns of Calcutta, Madras and Bombay. He therefore submitted the demand made by the State Bank of India was unjustified.

5. Shri Bhushan Mohta, learned counsel appearing for the respondents- State Bank of India opposed the aforesaid submissions by referring to the decision in *Balbir Singh Wasu vs. Lakhbir Singh and*

*others* ***[(2005) 12 SCC 503]*** to urge that as a matter of prudence and convenience, the State Bank of India could demand production of a probate certificate by the executor of the Will. According to him, the State Bank of India was dealing with public money and with a view to safeguard its interest, it was demanding production of the probate certificate. It was permissible for the petitioner to obtain the same and the amounts in question could thereafter be released in favour of the petitioner on the basis of the certificate of probate. The learned counsel also referred to the decision in *Nitesh Shashikant Khobragade vs. Anil Marotrao Khobragade and another* ***[2016 (4) Mh.L.J. 432]*** to submit that the demand made by the SBI was not unjustified.

6. Having heard the learned counsel for the parties and perused the documents on record, we do not find that the demand of probate certificate made by the State Bank of India is unjustified. It is true that an executor of a Will is required to obtain probate before establishing his claim under the Will under Section 213 of the Act of 1925 and this requirement was applicable to the Presidency Towns of Calcutta, Madras and Bombay. However, at the same time as held by the Hon'ble Supreme Court in *Balbir Singh Wasu* (supra) there is no prohibition for an executor from applying for probate as a matter of prudence or convenience to the Courts in other parts of the country not covered by Section 213 of the Act of 1925. It would thus follow that demand of probate certificate as a matter of prudence or convenience is also not

prohibited. The aforesaid decision has been relied upon by the learned Single Judge in *Nitesh Shashikant Khobragade* (supra) while upholding the order passed by the Civil Court of converting proceedings for grant of probate into a civil suit.

We find that that the State Bank of India has demanded probate certificate since it intended to safeguard itself while dealing with public money and was required to act on the basis of a registered Will. According to the State Bank of India, it was not in a position to verify the authenticity of the registered Will and hence with a view to safeguard its interest, such demand of probate certificate was made.

7. We do not find that there is any illegality in issuing the communication dated 03.03.2022 requiring the petitioner to obtain a probate certificate. There being no case made out to interfere in writ jurisdiction, the writ petition stands dismissed with no order as to costs.

**(MRS. VRUSHALI V. JOSHI, J.)** **(A. S. CHANDURKAR, J.)**

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