

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

WRIT PETITION NO. 8387 OF 2018

1. Prakashchandra Deokaranji Bhoot,
Aged about 70 years, Occ.: Business,
R/o. Anupam Building, Mangilal Plot,
Amravati.
2. Smt. Ushadevi Sureshchandra Bhoot,
Aged about 59 years, Occ.: Household,
R/o. Rachana Building, Tope Nagar,
Amravati.
3. Pravinkumar Sureshchandra Bhoot,
Aged about 45 years, Occ.: Business,
R/o. Rachana Building, Tope Nagar,
Amravati.
4. Pratik Surechchandra Bhoot,
Aged about 38 years, Occ.: Business,
R/o. Sagar Apartment, Mangilal Plot,
Amravati.
5. Navalkumar Deokaranji Bhoot,
Aged about 64 years, Occ.: Business,
R/o. Deegee Estate, Near Samarth High
School,
Badnera Road, Amravati.
6. Santoshkumar Deokaranji Bhoot,
Aged about 60 years, Occ.: Deegee Estage,
Near Samarth High School, Badnera Road,
Amravati.
7. Narendrakumar Deokaranji Bhoot,
Aged about 58 years, Occ.: Business,
R/o. Deegee Estate, Near Samarth High
School, Badnera Road, Amravati.

... Petitioners

Versus

1. Manoharlal Deokaranji Bhoot,
Aged about 62 years, Occ.: Business,
R/o. Deegee Estate, Near Samarth High
School, Badnera Road, Amravati.

... Respondents

2. Sau. Pushpadevi Harishkumar Kedia
w/o Dr. Harishkumar Kedia,
Aged about 66 years,
R/o. of 'Pooja Bangalow', 318/A Model
Town, Wardhaman Nagar, Nagpur -440008.

Mr. J.J. Chandurkar, Advocate for petitioners.

None for respondent No.1.

Ms. Palakh Agrawal, Advocate h/f Mr.Atul Pande, Advocate for
respondent No.2.

CORAM : VALMIKI SA MENEZES, J.
RESERVED ON : 07.06.2023
PRONOUNCED ON : 12.06.2023

JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally
by consent of both the learned counsel for the parties.

(2) This petition filed under Article 227 of the Constitution of India impugnes order dated 04.08.2018 passed by the Civil Judge Senior Division, Amravati, in RMJC No.597/2015 on application at Exh.37 of the record of the trial Court: Exh.37 is an application filed at the behest of the petitioner seeking the dismissal of a petition filed by respondents under Section 372 of the Indian Succession Act, 1925, (for short 'the Act'), for non-payment of the requisite fee under Section 379(1) of the said Act.

(3) The question that is called for decision in this petition is:

(a) “Whether an application for issuance of a certificate of Succession filed under Section 372 is maintainable when the fee prescribed under Section 379(1) of the Act, has not been paid along with the presentation of the application; and further,

(b) Whether the Civil Court dealing with the application filed under Section 372 of the Act, for issuance of a certificate of Succession would lack jurisdiction to proceed to hear the application, for want of deposit of the fee referred to under Sub-section (1) of Section 379 of the Act.”

(4) The facts relating to the filing of this petition are as under:

Respondent No.1 – Manoharlal Deokaranji Bhoot, filed RMJC No.597/2015 before the Civil Judge Senior Division at Amravati, seeking a Succession Certificate in terms of Section 372 of the Indian Succession Act, 1925, for the allotment of the estate of his

deceased mother late Smt. Geetabai Deokaranji Bhoot. The petitioner Nos.1, 6, 7 and 8 are real brothers of the original applicant/respondent herein while the original non-applicant No.5 was the real sister of the applicant.

In the application for issuance of the Succession Certificate, at paragraph 10 thereof the applicant has specifically undertaken to pay the requisite stamp duty in accordance with the provisions of the Bombay Stamp Act on the date of the decision of the application.

(5) The non-applicants/petitioners herein opposed the maintainability of the application by filing an application at Exh.37 of the record of the trial Court for dismissing the petition purportedly for the non-payment of the court-fees, on the contention that the court-fees as payable under the Bombay Court Fees Act, 1959, had not been paid along with the application for the certificate, in terms of Sub-Section (1) of Section 379 of the Indian Succession Act, 1925. It was their contention that for non-payment of this fee, the application was not maintainable and the trial Court lacks jurisdiction to proceed with the hearing of the succession proceedings.

The trial Court has dismissed this objection holding that payment of court-fees under Section 379(1) was not a *sine quo non* for the maintainability of an application under Section 372 nor does it affect the Courts jurisdiction to proceed with deciding the succession application.

(6) Heard the learned counsel for the parties, perused the record.

(7) It is the submission of the learned counsel for the petitioners that Section 379(1) of the Act, requires that every application for a certificate of Succession shall be accompanied by court-fee to be calculated in accordance with the provisions of the Bombay Court Fees Act, 1959. He has emphasized that the word used in Section 379(1) is “accompanied by” and as such, the intention set out in these provisions was that an application for a certificate should not be entertained without the requisite court-fees being collected before proceeding with the matter.

It is further the contention of the learned counsel for the petitioners that the reading of the provision of Sub-Section (2) of

Section 379 of the Act, specifies that such sum deposited is required to be spent in the purchase of stamp to be used at the time the Succession Certificate is issued, and for that reason, the fees are required to be accompanied along with the application in order to vest the Court with jurisdiction to proceed in the matter. He relies upon the judgment of this Court in *Snehala Pramod Desai Vs. Unknown, reported in 2012(5) Mh.LJ. 340*, contending that this Court has held that an applicant is liable to pay *ad valorem* Court fee upon the security shown in the petition in order to secure a Succession Certificate.

(8) Respondent No.1, though served has not put in appearance. However, the respondent No.2 who is his real sister has put in appearance and advanced arguments in this matter. Learned counsel for the respondent No.2, on the other hand, contends that the provisions of Section 379(1) of the Act, are not mandatory and the only requires the deposit of a sum equal to the fee payable under the Court Fees Act, 1870, or as in the present case, under the Bombay Court Fees Act, to be utilized for purchase of stamp duty payable on the share of each of the parties, on passing of the final Succession Certificate. She further contends that such deposit can be made even

at the time of determination of the share of each of the parties, on the Court setting down a value for each of such shares when it finally issues a certificate of Succession. Further contention of the learned counsel for respondents is to the effect that a certificate would not be issued to such successor who fails to deposit the court-fee due on the share being allotted at the time of disposal of the matter.

Learned counsel for the respondents has further relied upon a judgment of the Single Judge of the Allahabad High Court in *Kum. Rakhi and anr. Vs. 1st Additional District Judge, Firozabad and Ors., reported in AIR 2000 Allahabad 166* and on the judgment of the Madhya Pradesh High Court in *Smt. Usha and Ors Vs. State, reported in AIR 1993 MP 41* to buttress her submission that the provision of Section 379 of the Act, are only procedural and do not affect the applicants substantive right to maintain an application under the provision of Section 372 of the Act. He further submits that the ratio laid down in these judgments was to the effect that the non-compliance with deposit of the fee prescribed under Section 379(1) of the Act, would neither take away the jurisdiction of the Court to proceed with the Succession proceedings, nor does it affect in any manner the maintainability of the application: as such, the fee can be

paid and recovered at the time of issuance of the certificate of Succession, if granted by the Court. It is the contention of the learned counsel for the respondent that there is no infirmity in the order of the trial Court, which has been passed upon sound legal foundation.

(9) In order to answer the questions raised in this petition, it would be apposite to reproduce the provisions of Section 372 and 379 of the Indian Succession Act, which read as under:

“372. Application for certificate - (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:—

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

[(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]”

379. Mode of collecting Court-fees on certificates - (1)

Every application for a certificate or for the extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court-Fees Act, 1870 (7 of 1870), in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it.

(10) A plain reading of Sub-section (1) of Section 372 provides for the filing of an application for the Succession Certificate to the District Judge. It further provides for the manner in which such a petition is to be signed and verified, which shall be in the manner prescribed by the Code of Civil Procedure, 1908, and it shall be in the same manner that a plaint is signed and verified. Sub-Section (1) of Section 372, unlike the provisions contained in the Code of Civil Procedure, 1908, dealing with the filing of a plaint does not prescribed presentation of the application along with the requisite court-fee or a valuation to be set down of the relief sought in the application.

(11) A reading of Sub-Section (1) of Section 379 suggests that every application for a certificate shall be accompanied, not by court-fees, but by a sum equal to such court-fee as may be payable in respect of a Succession Certificate. Sub-Section (1) of Section 379 of the Act, does not prescribed the consequence of non-deposit of the sum referred to therein, when not accompanying the application.

(12) It is thus clear that the provision of Section 379 do not prescribed for the payment of requisite court-fee along with the application but prescribe the deposit of a sum of money in the Court, which would be ultimately expended, under orders of the Court, towards purchase of stamp to be used for denoting the fee payable on the value of each of the shares of the successors. In the event of the Court deciding not to allot any share or to dismiss the application, the parties who has deposited such sum would be entitled to a refund of the same in terms of Sub-Section (3) of Section 379. The scheme of Section 379 itself denotes that the sum to be deposited is not actual court-fee under the Court Fees Act but an amount which may be expended or refunded, at the time of final orders to be passed on the application. It would stand to reason therefore, that the provision of Section 379 could not be mandatory and require such a sum or fee to be deposited as a *sine qua non* for the maintainability of an application under Section 372 of the Act.

(13) Looked at from a different angle, neither the provision of Section 372 nor those of Section 379 in any manner lay down that a Court dealing with such an application would lack

jurisdiction to proceed with the matter in the absence of the sum required to be deposited under Sub-section (1) of Section 379. The jurisdiction of the Court to proceed to hear an application for issuance of a Succession Certificate would not depend upon whether the sums specified under Sub-section (1) of Section 379 has been deposited or not; however, a combined reading of Sub-section (1) & (3) of Section 379 of the Act, would suggest that the Court would not issue a Succession Certificate on the culmination of the proceedings, to a party declared as a successor or having a share in the estate, unless the requisite court-fees payable on such share is paid before issuance of such a certificate.

(14) *Kum. Rakhi and another (supra)* was a case, which dealt with precisely the same question as raised before me, has been answered by a Single Judge of the Allahabad High Court. The ratio laid down by the Allahabad High Court on the interpretation Section 379 of the Act, is found in paragraphs 15, 21 and 22 of the judgment and which reads thus:

“15. The decision in the case of Mt. Fatmabi, AIR 1940, Nag 65, it was held on the identical ground that it was not a court-fee, and the amount deposited under Section 379 was

held to be refundable if not expended. On the analogy of this decision, it can be concluded that had it been a court-fee, it would not have been refundable. In fact, it was only to secure the payment of the court-fee after the certificate is granted or to see that the person applying has the means to pay the court-fees. Therefore, non-deposit thereof cannot make the application non-maintainable.

21. As observed earlier, a plain reading of the section does not indicate that non-deposit would be fatal to maintain the proceeding. In the decision in Jaskunver (supra), the Court can ascertain by a summary enquiry. If it can so be ascertained by a summary enquiry, then it can very well be ascertained by a full fledged enquiry, as well or in other words it can be ascertained after the order is made and then require the applicant to deposit the amount on the eve of the grant to enable issue of the certificate. Non-compliance of Section 379 of the Succession Act may be an irregularity but not an illegality before the grant of the certificate. Such irregularity is curable and can be cured on the eve of the grant by directing the applicant to deposit the amount before grant is made and certificate is issued.

22. Thus, it appears that the provision contained in Section 379 is not mandatory to the extent that non-deposit of the amount equal to the court-fees payable on the succession certificate would non-suit the petitioner or preclude the jurisdiction of the Court to entertain the same. After the certificate is granted, the non-deposit would not render the

same inoperative or ineffective. Only if the court-fees are not paid when the certificate is issued then only the application would be dismissed and the certificate would not be granted. Therefore, I am unable to persuade myself to agree with Mr. Yadav on this ground.”

(15) The very same point came up for consideration in an earlier judgment rendered by the Madhaya Pradesh High Court in *Smt. Usha and Ors. (supra)* where, whilst considering whether the provision of Sub-section (1) of Section 379 of the Act, poses a bar for maintain application for Succession Certificate for consider and dealt with thus:-

“4. It is true, on a plain reading of Section 379 one is apt to be misled by the language used but the purport of the provision provides a valuable clue to its real object. The marginal note or section-heading is significant -"Mode of collecting Court-fees on certificates." It is trite law that when there is any ambiguity, it is legitimate to refer to section heading/marginal note to seek intrinsic evidence of Legislative intent (See Bhinka, AIR 1959 SC 960 : (1959 Cri LJ 1223) K. M. Nanavati, AIR 1961 SC 112 : (1961 (1) Cri LJ 173). It appears clear to me that the provision is not contemplated as a bar for any application for Succession-Certificate to be entertained unless the deposit contemplated therein is made beforehand for the purpose of court-fees subsequently to be used when the certificate applied for is issued. What is also manifestly clear is that

requirement of filing along with the application any court-fees, for the certificate which may or may not be eventually issued, is not at all contemplated. The language of Section 379 does not admit any ambiguity about that. In that regard the Court below is obviously wrong in stretching the language used in the provision. That is certainly impermissible because that tanta-mounts to judicial legislature.

5. The provision of deposit accompanying the application, evidently, is not mandatory and it does not constitute any condition precedent to be satisfied for the application to be entertained and tried. Its purport is procedural and it does not affect the applicant's substantive right to make the application contemplated under Section 372 aforequoted, which is not saddled by any other requirement except the that of setting forth in the application the enumerated particulars. It really serves the purpose for which it is enacted, to provide the "mode of collecting court-fees on certificates" to be issued if and when the application is allowed. Whether any statutory provision is directory or mandatory is the question to be determined by applying the well-settled tests. What consequence ensue from non-compliance with the provision in question is an important factor to be considered along with the other usual norms such as purpose of the statute and object of the particular provision. See in this connection Dalchand, AIR 1983 SC 303 : (1983 Cri LJ 448); M. V. Valipero", AIR 1989 SC 2206; Karnal Litter Karmachari Sanghthan, AIR 1990 SC

247 : (1990 Lab IC 301). About the object of the provisions, very little is to be added. About the consequence, few words I would still say. If the deposit contemplated does not accompany the application, no impediment would be created thereby for the Court to entertain the application, try the same and decide if case is made out for issuance of certificate prayed. On the other hand, the purpose of the Act would be defeated creating special jurisdiction in Part X which is to be regarded as Special Law laying down special procedure in accordance with which the application is to be heard and disposed of. The object of the provision being merely collection of Court-fees before a certificate is issued, that is fulfilled when requisite deposit is made before the certificate is issued upon holding the applicant entitled thereto.

6. In my view the provisions of Section 379 aforequoted are to be read as supplemental to those of Article 12 of Schedule I of the Court-fees Act. It is clearly contemplated in Article 12 that court-fees ad valorem is to be paid, not on the application filed making prayer for issuance of a Succession Certificate, but on the "Certificate under Part X of the Indian Succession Act, 1925". For the application, the Court-fees Act makes separate provision in Schedule II and under Article 1 fixed court-fees of Rupees Two is prescribed in respect of an application or petition filed in any Court for which specific provision has not been made in the said Schedule. Section 6, Court-fees Act contemplates the threshold requirement for invocation of

jurisdiction of any Court other than High Court by providing that the documents specified in the Schedules of the Act shall not be received by such a Court. Unless in respect thereto the prescribed court-fees is paid, there is no other provision in the said Act prohibiting any application for succession Certificate to be entertained and decided unless ad valorem court-fees is paid in advance for the "certificate" which may or may not be issued in future. It is obvious that liability to pay court-fees under Section 6 is contemplated in respect of the "application" read with Article I of Schedule II while in respect of the "certificate" that arises when the applicants' entitlement in that regard is decided, not before that."

(16) The judgment of this Court rendered in *Snehala Pramod Desai (supra)* would have no application in the facts of the present case since in that case, the question that was being dealt with was whether the petitioner, as a woman, was entitled to waiver/exemption of payment of court-fees upon the security shown in the petition, which was sought to be transferred in the name of the petitioner. In that case, the Court held that the petitioner, even though being a woman, was not entitled to remission/exemption or waiver of the Court fee, since the widow/petitioner had actually received the transferred securities on to her name. That judgment, therefore, does

not answer the question to be determined by this Court, as formulated in para 3 above.

(17) Considering the provisions of Section 372 read with Section 379 of the Indian Succession Act, 1925, in answer to the questions formulated in para 3 above, I am of the view, for the reasons discussed, that the deposit of the sum to be expended on the fee referred to in Sub-section (1) of Section 379 is not mandatory, and non-deposit of the same along with the filing of the application that issuance of Succession Certificate under Section 372 of the Act, does not affect the maintainability of the application or of the jurisdiction of the Court to proceed to deciding the application. The view taken by me is supported by the ratio laid down by the Allahabad High Court in *Kum. Rakhi and anr. (supra)* and by the Madhaya Pradesh High Court in *Smt. usha and Ors., (supra)*, which I am entirely in agreement with.

(18) For the reasons stated above, I find no infirmity in the impugned order dated 04.08.2018 rendered by the Civil Judge Senior Division, Amravati in RMJC No.597/2015. The order is fully in consonance with the provisions and interpretation of Section 372 read

with Section 379 of the Indian Succession Act, 1925. There is no scope for interference with the impugned order.

(19) Accordingly, the writ petition is dismissed. In the circumstances, there shall be no order as to costs.

[VALMIKI SA MENEZES, J.]

Prity