

256

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

C.R NO. 1901 OF 2020

DATE OF DECISION: 09.02.2023

Manpreet Kaur and another

...Petitioners

Versus

General Public and another

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rakesh Chopra, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned orders dated 07.09.2018 (Annexure P-1) and 07.12.2019 (Annexure P-2) passed by learned Additional District Judge, Fatehgarh Sahib, whereby appeal filed by petitioners against the judgment and decree dated 21.08.2015 (Annexure P-3) passed by learned Civil Judge, was dismissed.

2. Succinct facts, first as pleaded in the revision petition. Petitioners, being widow and mother of deceased Hardeep Singh, filed application under Section 372 of Indian Succession Act, 1925 for grant of succession certificate, qua his assets as he died intestate on 28.06.2013 in a roadside accident at village Adampur, Tehsil and District Fatehgarh Sahib. Upon notice, no one appeared on behalf of respondents to contest the application and ultimately, vide order dated 21.08.2015 (Annexure P-3), Succession Certificate in respect of sum of Rs.22,65,941/- was issued in favour of petitioners in equal share subject to furnishing their indemnity bonds in the sum of Rs.25 lakh with one surety in like amount.

However, interest as claimed by the petitioners was not allowed vide impugned orders and hence the instant petition.

3. Learned counsel for petitioners argues that learned Civil Judge (Senior Division), while exercising the powers of District Judge under the Indian Succession Act, has rightly granted the succession certificate with respect to the amount, which was due from respondent No.2-Municipal Council, Sirhind, towards the deceased. However, learned Civil Judge, while passing order dated 21.08.2015 (Annexure P-3) committed grave error of law and fact by not granting interest @ 12% per annum to petitioners, who are legal heirs of the deceased.

4. Given the nature of order being passed, there is no necessity to issue notice to respondents, as no prejudice would be caused to them. Notice to respondents is thus dispensed with.

5. Impugned order is premised essentially on the understanding of learned Additional District Judge that the appeal had since been filed under Section 96 of CPC, which was not maintainable in view of Section 384 of Indian Succession Act, 1925; it lacked jurisdiction to entertain the same and accordingly dismissed it. For ready reference, relevant extract of the impugned order passed by learned First appellate Court is reproduced herein below:

“2. A preliminary question that arises with regard to the maintainability of the appeal. Ld. Counsel for the appellants conceded that present appeal was not an appeal U/S 96 of CPC and was rather an appeal under the provisions of Indian Succession Act, 1925 because the impugned order dated 21.08.2015 was passed in a petition filed under the Indian Succession Act for the grant of a succession certificate.

3. It would be expedient to recall the bare provision of Sections 371, 384 and 2 (bb) of India Succession Act, 1925 :

Section 371

The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found; may grant a certificate under this Part.

Section 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 therefore, to grant it accordingly, in suppression 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.*

Section 2 (bb)

“District Judge” means the Judge of a Principal Civil Court of original jurisdiction.”

4. *What is evident from the above provisions is that it is the Court of the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death is to get the certificate. It were the delegated power of District Judge which were exercised by the court of Civil Judge (Senior Division) while entertaining the Succession Petition in hand which culminated into the order dated 21.8.2015. As provided by Section 384 of Indian Succession Act the forum to file an appeal against the order of the District Judge either granting or refusing or revoking succession certificate would be the higher court.”*

5. Perusal of the above order reveals that learned appellate Court being under impression that since learned Civil Judge had decided the petition under the Succession Act, exercising delegated powers of a

District judge under Section 371 and therefore, High Court was the appellate forum and not the District Judge. I need not labour all over again as the controversy has been put to rest by an earlier judgment rendered by R. K. Jain, J. (as he then was in this court) in FAO No.481 of 2010 titled “Usha Devi v Shashi Bhusah”. Relevant thereof, is reproduced herein below :

*“5. Undisputedly, in this case the powers of learned District Judge have been delegated to the Civil Judge (Sr. Division), Ferozepur who has decided the application under Section 372 of the Act. Had the application been decided by the District Judge himself in whatever manner, the appeal would have definitely been maintainable before the High Court but since the application under Section 372 of the Act has been decided by delegate of the District Judge then in view of Proviso to Section 388 (1)(2), the appeal shall lie to the District Judge and not the High Court. In the case of **Mosammat Parmeshwari Devi and another v. Geeta Devi and others** (supra), it is held as under :*

“It is manifest from the provision of Section 388 (2) and its proviso clause that any inferior court who has been invested with the power to exercise the function of a District Judge shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Judge in exercise of all the powers conferred by this part upon the District Judge but the proviso clause makes it abundantly clear that where the inferior Court has passed any order under sub-section (1) of Section 384, then the appeal shall lie to the District Judge and not to the High Courts.”

*“The submission of the learned counsel that the District Judge has got no pecuniary jurisdiction to entertain an appeal where the jurisdiction exceeds Rs.One lac has got no force in it because there is no such bar under the Act. The decision cited by the learned counsel in the case of **Bhim Singh v. Mohan Lal Aggawal, 1991 (2) Pat. LJR 325**, will have no application in this case which relates to the case under the general provision of the CPC and not under the provisions of this Act.”*

“Relying upon the aforesaid decision, I hold that the appeal against the order passed by the Subordinate Judge shall lie to the District Judge

and not before the High Court in view of the provision of Section 388 (2) and proviso clause of the Act.”

6. *Similar view is taken in Vadia Banerjee v. Sardar (supra) Karunamoyee Sett & Others v. Lakshmirani Devi and others (supra) and Manohar son of Bapurao Sapre v. Bhaurao son of Tukaramjit Shirbhate and another (supra).*

7. *In view of the consistent view of different High Courts on this issue, I hold that the present appeal is not maintainable having been filed before this Court against the order passed by Addl. Civil Judge (Sr. Division) Ferozepur, who has decided the case as a delegate of the District Judge. Therefore, the present appeal is dismissed as such.”*

6. I am in respectful agreement with the view taken as aforesaid and see no grounds as to why the impugned appellate order dated 07.12.2019 Annexure P-1 be not set aside. Further, the impugned order dated 21.08.12015 passed by the learned trial Court shows that the amount for which the succession certificate had been sought was payable to Hardeep Singh deceased by the respondent Municipal Council, Sirhind for the works done by him as contractor of the Council for the years 2010-11 and 2012 up to 28.06.2013 including the amount of his security. The petitioners had claimed interest on the said amount @ 12% per annum.

7. The impugned order dated 21.08.2015 passed by the learned trial Court is just silent on this part of the claim. To my mind, the petitioners ought to have been also allowed reasonable interest on the principal amount of Rs. 22, 65,941/-, which the learned trial Court found payable to them. To that extent, the impugned order dated 21.08.12015 passed by the learned trial Court requires modification. As a result, this petition is allowed, the impugned appellate order dated 07.12.2019 Annexure P-1 is set aside while the impugned order dated 21.08.12015 passed by the learned trial Court is modified and it is directed that the

petitioners shall also be entitled to interest @ 7% per annum on the amount of Rs. 22,65,941/- from the date of filing of their application for succession certificate in the learned trial Court till the date of actual payment.

8. In the premise, the revision petition stands allowed in above said terms.

9. Pending application(s), if any, shall also stand disposed of.

FEBRUARY 09, 20223
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**