

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :-10th May, 2024

FOR COMPLIANCE:

510. TP/785/2024
(ECHCBM0217902023)

P. C. : Shri. Zaki Shaikh Ld. Advocate for the Petitioner

1. Petitioner No.1 has applied for grant of letters of administration in respect of the properties of Pritam Govind Jadhav, for herself and on behalf of her minor son. It is stated that the deceased died interested leaving behind the petitioner No. 1 and Devansh, minor son of the deceased and the petitioner.

2. I have gone through the petition. On the last occasion, I raised a query about the maintainability of the petition on behalf of the petition No.2 (i.e. minor son). It is submitted that the petition on behalf of the minor through legal guardian is maintainable. Ld. Advocate for the petitioner has relied upon the decisions of Hon'ble Kolkata High Court in case of bane Dhane Ali Mia and others V/s Sobhan Ali and others (AIR 1978 Cal 399). In this case Will was executed by the testator and thereby bequeathed the property to the minor. Hence, petition was taken out for grant of letters of administration on the basis of the Will by the legal guardian of the *said* minor. It was disputed before the honorable High Court about the maintainability. The Hon'ble High Court has laid down that in Indian Succession Act, 1925(for short "IS Act"). As per sec. 244 and 245 of the IS Act, the petition was held to be maintainable.

3. In another case of Sm. Sarajubala Das V/s Jyoti Kamal Das (1972 SCC OnLine Cal 89 : AIR 1973 Cal 45), it is held at petition on behalf of the minor is tenable. In the said petition, minor was the legatee under the Will executed by Testatrix namely Smt. Usharani Dasi. Hence, the Hon'ble High Court laid down that the petition on behalf of the minor under section 236 of the IS Act is not barred.

4. Lastly, Ld. Advocate for the petitioner has relied upon the decision of Hon'ble Madras High Court in case of C.B. Chandrasekhar(1989 SCC OnLine Mad 214). In that case the office of the Hon'ble Madras High Court insisted the guardian of the minor, who was the legatee under the Will, to get appointment as a legal guardian under the provisions

of Hindu Guardianship and Minority Act. However, upon relying the decision laid down in case of Sm. Sarajubala Das, the Hon'ble Madras High Court has laid down that there is no such requirement to get an appointment as a legal guardian of minor to present a petitioner under provisions of the IS Act.

5. In cited cases, minors were legatees under the Will. Hence, petition on behalf of the guardian of the such minor held maintainable. Furthermore, there is specific provision of Sec. 244 and 245 of the IS Act, which provides such remedy.

6. In the present petition, issue is in respect of the section 236 and 246 of the IS Act. As per provisions of IS Act, particularly section 236, grant cannot be issued in favour of the minor. So it is made clear, that minor cannot be a petitioner before the court to obtain the grant. However, as per section 246 of the IS Act, the guardian of the minor can present the petition for issuance of letters of administration with will or without will, if conditions specified there in are fulfilled. For the convenience said provisions are reproduced as under

Sec. 236 and 246 of IS Act, 1925

***“ To whom administration may not be granted.—*Letters of administration cannot be granted to any person who is a minor or is of unsound mind, nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette, by the State Government] in this behalf.**

246. Administration for use and benefit of lunatic or minor.—If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, is a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care ii)f his estate has been committed by competent authority; or, if there is no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the minor or lunatic until he attains majority or becomes

of sound mind, as the case may be.”

6. Sec. 246 of IS Act, operettas in two part. The first part applies where minor is the executor or legatee under the Will. Whereas, the another part is in respect of the succession of intestates succession or deceased person. In the present petition, later portion is applicable as disease died intestates. Hence, as per said provision, in that case, if the only minor heir of the deceased is entitle to inherit the property of the deceased, then and then cases, guardian of the such minor can present the petition for letters of administration in respect of the properties left by the deceased with prayer to grant limited grant, until minor attends the majority.

7. Admitted position in the petition is that the petitioner No. 1, being the widow of the said diseased, is also entitled to inherit the property of the deceased. Hence, petition on her behalf is tenable, vide Sec. 218(1) of the IS Act. Therefore, as per section 246 of IS Act, in a present case, the minor is not sole heir of the deceased person. Hence, requirement of Sec. 246 of IS Act is not fulfilled. Therefore unless and until such condition is fulfilled, petition on behalf of the minor through guardian cannot be entertained.

8. Therefore in such circumstances, it will be proper for the petitioner to take steps about the maintainability of the petition on behalf of the petitioner No. 2, that is minor.

9. S.O. to 20.06.2024.

10.05.2024

**Officer on Special Duty,
with Testamentary Department**