



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

<u>WRIT PETITION NO.6232/2023</u>	
<u>PETITIONERS</u>	1) Nilofer Jabin Sharik Ahemad Khan, Age : 38 years, Occ : Household Work. 2) Alina Sarosh Sharik Ahemad Khan, Age : 12 years, Occ : Minor. 3) Aamer Khan Sharik Ahemad Khan, Age : 4 years, Occ : Minor. G.A.L. Mother-applicant No.1 For No.2 & 3, All R/o Gaibipura, Risod, Tq. Risod, Dist. Washim. Now R/o Rani Laxmibai Road, Dhanubai Plot, Near Magar Hospital and Buranshah Darga, At Parbhani, Tq. & Dist. Parbhani.
<u>...VERSUS...</u>	
<u>RESPONDENT</u>	Jakiya Khatun Ataullakhan, Age : 66 years, Occ. Household, R/o Gaibipura, Risod, Tq. Risod, Dist. Washim.
Mr. A.R. Deshpande, Advocate for petitioners Mr. B.P. Parwe, Advocate for respondent	

CORAM : BHARAT P. DESHPANDE, J.

DATE : 21/03/2024

ORAL JUDGMENT

1. Heard Mr. A.R. Deshpande, learned counsel for the petitioners and Mr. B.P. Parwe, learned counsel for the respondent. Rule. Rule is made returnable forthwith. Heard finally at the stage of admission with consent.

2. The order impugned in the present petition is dated 13/06/2022, passed by the Civil Court, thereby suspending the proceedings filed by the petitioner under Rule 2 of the Bombay Regulation VIII of 1827 (For short, “Bombay Regulations” hereinafter), on the ground that the proceedings and objections are complicated and difficult to decide in this application.

3. Similarly, the petitioners are challenging the order passed by the first Appellate Authority i.e. District Judge dated 27/04/2023, thereby rejecting the appeal.

4. Mr. Deshpande, learned counsel for the petitioners submits that the petitioner no.1 is the widow of Sharik Ahemad Khan Ataulah Khan, whereas petitioner nos.2 and 3 are the children. Said Sharik Ahemad Khan died on 09/07/2021, leaving behind him the petitioners and the respondent – mother as the only legal heirs. The petitioners, accordingly, filed an application before the Civil Court on 09/08/2021 under Rule 2 of the Bombay Regulations for grant of heirship certificate.

5. On receipt of notice, the respondent appeared and filed her written statement, wherein there is no dispute with regard to the relationship of the petitioners with the deceased. However, she

claimed that in view of Will dated 31/07/2020, she is entitled to all the amount in the GPF account, the Bank balance and the pensionary benefits, which were available to the deceased. The respondent filed application under Rule 4 of the Bombay Regulations for suspension of the said proceedings. The learned Trial Court, considering the objections raised by the respondent and without conducting any enquiry or recording any evidence, passed the impugned order, thereby suspending the proceedings.

6. The petitioners filed an appeal before the District Court vide Misc. Civil Appeal No.1/2023, however, said appeal has been rejected.

7. Mr. Deshpande, learned counsel for the petitioners submits that in similar circumstances, this Court in Writ Petition No.6954/2018 decided on 01/02/2019 (Coram : Manish Pitale, J.) has observed that grant of heirship certificate would not *ipso facto* lead the parties to raise the claim or lead the recognition of any rights of the petitioner in the property of the deceased.

8. Mr. Parwe, learned counsel for the respondent would submit that the petition itself is not tenable, in view of the provisions of Section 388 (3) of the Indian Succession Act, 1925. He submits

that at the most, a revision would lie against the orders passed by the Court below.

9. As against this, Mr. Deshpande, learned counsel for the petitioners would submit that Section 384 of the Indian Succession Act deals with appeal and the powers of appeal are with the District Judge, as delegated under the said provision.

10. Mr. Deshpande, learned counsel for the petitioners would submit that the appeal was inadvertently filed, however, only the writ petition is maintainable, since the order passed by the Trial Court is only for suspension of the proceedings under Rule 4 (2) of the Bombay Regulations.

11. A perusal of the above provision and the fact that the order of the learned Trial Court is only for suspension of the proceedings under Rule 4 (2) of the Bombay Regulations, the writ petition is maintainable.

12. The ground of objections raised by the respondent, is only on the basis of a Will left by the deceased. However, the learned Trial Court has lost the sight of the basic concept that issuance of certificate of heirship would not go into recognition or crystallization of any right in favour of the petitioner. At the most, on the basis of

such certificate, the petitioners would be able to raise their claim on the properties left by the deceased. The respondent is entitled to resist such claim, if raised by the petitioners, on the strength of the Will left by the deceased.

13. First of all, the objections raised by the respondent to the application for grant of heirship are not raising any complicated or difficult question for the simple reason that the respondent admitted relationship of the petitioners with the deceased. Therefore, the learned Trial Court, by completely misconstruing the objections, exercised the jurisdiction incorrectly, thereby suspending such proceedings and that too without recording any evidence.

14. Even otherwise, the suspension of the proceedings as provided under Rule 4 (2) of the Bombay Regulations is only after adducing evidence and not at the initial stage itself.

15. In view of the above, it is apparent that the learned Trial Court is not justified in suspending the proceedings and directing the parties to approach the Civil Court.

16. Therefore, the writ petition is partly allowed. The impugned order is hereby quashed and set aside. The learned Trial Court is directed to decide the application in accordance with law.

The Trial Court shall decide such application as early as possible and within a period of two months from the date of placing copy of this order before it.

17. Rule is made absolute in the aforesaid terms. No order as to costs.

(BHARAT P. DESHPANDE, J.)