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Considering the judicial dictum as noted in the two cases above named, we see no justification to uphold the plea and call it an exercise of judicial legislation.

20. The conscious omission of not providing a separate scheme and mechanism appears to have been done by the State legislature while drafting section 7-A of the MMC Act. This conscious omission will have to be respected as it stands.

21. As such the petitioner cannot seek a direction in exercise of the extraordinary jurisdiction of this Court. Similar challenges having been considered by the Division Benches of the Bombay High Court at Goa and Aurangabad respectively, put to rest, the challenge put forth by the petitioner.

22. Therefore, in the light of foregoing discussion and since the Court has already taken a view in two similar cases, we find no distinguishing factor so as to take a different view in the case on hand.

23. In the result, the petition fails and is dismissed accordingly. Rule is discharged. No order as to costs.

Petition dismissed.

REVOCATION OF PROBATE : NOT PERMISSIBLE AFTER 7 YEARS

(R. D. Dhanuka, J.)

HARIPADA ROY alias HARIPADA GOKULBIHARI
ROY (deceased) RAANA HARIPADA ROY

Petitioner.

vs.

SUBHASH CHANDER REWARI

Respondent.

(a) Succession Act (39 of 1925), S. 263 — *Petition for revocation of probate — Petitioner, a graduate, gave consent affidavit for grant of probate — No steps were taken by him to withdraw his consent affidavit at any point of time pursuant to the date of order granting probate — Cannot be permitted to seek revocation of probate without any justification after seven years from date of grant. (Paras 10 to 12)*

(b) Succession Act (39 of 1925), S. 263 and Limitation Act (36 of 1963), Sch. I, Art. 137 — *Application for revocation of probate — Limitation — Article 137 of Schedule I of Limitation Act would be applicable and application has to be filed within 3 years from date of grant of probate — Application filed after seven years of grant without prayer for condonation of delay — Delay not explained — Application is liable to be dismissed on the ground of limitation. (Para 12)*

For petitioner : *Vivek Kantawala* instructed by *Vivek Kantawala and Co.*

For respondent : *Aditya Khandeparkar* along with *Ms. Minal Chandnani, Cynthia Pereira* instructed by *Rajani Associates*

List of cases referred :

1. *Ramchandra Rambux vs. Champabai and others,*
AIR 1965 SC 354 (Paras 5, 13)

Misc. Revocation Petition No. 79 of 2013 in Petition No. 436 of 2005 decided on 17-9-2013. (O.O.C.J., Bombay)

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2. *Nina Agarwalla vs. Ashok Gupta, Appeal (L) No. 180 of 2013 and Appeal (L) No. 181 of 2013 decided on 10-5-2013 [2013(4) Mh.L.J. 464]* (Para 8)
3. *Bihar State Electricity Board vs. M/s Green Rubber Industries Ltd., (1990) 1 SCC 731* (Paras 9, 11)
4. *Grasim Industries Ltd. vs. M/s Agarwal Steel, AIR 2010 SC (Supp) 291* (Paras 9, 11)

P. C. :— By this petition, petitioner seeks revocation of grant of probate dated 10th May, 2006 issued by this Court in respect of the Will dated 8th November, 2002 of the deceased Mr. Haripada Roy who died on 25th November, 2002. The petitioner is the son of the said deceased.

2. It is not in dispute that one of the executors named in the Will Mr. Subhash Chander Rewari had filed petition (436 of 2005) in this Court inter alia praying for probate of the Will dated 8th November, 2002. Consent affidavits of Mrs. Bani H. Roy, Ms. Shobha Mukherjee and the present petitioner i.e. Mr. Rana H. Roy were filed. Deponents of the affidavits have deposed that they were aware that the said deceased died on 25th November, 2002 and had left a Will dated 8th November, 2002. The deceased had appointed Mrs. Bani H. Roy, Mr. Subhash Chander Rewari and Mr. Durga Shankar Sharma as executrix/executors of the estates of the said deceased and Mr. Subhash Chander Rewari had appointed M/s Rajani Associates, Advocates and Solicitors to apply for the probate of the estate of the deceased. In paragraph (4) of the said affidavit, deponents including the petitioner gave their no objection and gave their full and free consent that the probate be granted in favour of Mr. Subhash Chander Rewari without service of any citation/notice upon them and without justifying any surety in respect of their share in the estate of the deceased. Signature of the petitioner was identified by the solicitor M/s Rajani Associates who had filed that petition. In view of the consent affidavit filed by the all the legal heirs of the deceased, this Court granted probate in favour of the executor on 10th May, 2006.

3. The petitioner has filed this petition on 27th June, 2013 inter alia praying for revocation of the grant of probate on various grounds. Mr. Kantawala, learned counsel appearing for the petitioner invited my attention to the grounds raised in the petition. It is submitted that there was gross delay in filing probate petition. Though deceased had expired on 25th November, 2002, probate petition was filed only in the month of April, 2005. It is submitted that though there were three executors appointed under the Will in question, petition came to be filed only by one executor. Mrs. Pratima Choudhary had filed her affidavit whilst other witness Ms. Sushama Rewari has not filed her affidavit as a witness. Learned counsel invited my attention to the Will and testament and submits that the signature of the witnesses is not below the signature of the testator but is on the separate page. My attention is also invited to the affidavit of the attesting witness filed by Ms. Pratima Chaudhary. Learned counsel submits that though in the said affidavit of the attesting witness, it is stated that the attesting witnesses had signed the Will at the foot of the testamentary paper as witness and had alleged that there were initials on each page of the said Will before execution of the Will, no such initials are found on the Will which has alleged to have been witnessed by the said witness. It is submitted that there was

already an existing Will on the date of execution of the Will in question which was suppressed by the executor. Learned counsel submits that signature of the deceased on the Will in question and Will dated 16th December, 1995 are different which creates a suspicion of the execution of the Will in question.

4. Learned counsel submits that though the petitioner had signed the consent affidavit, the said affidavit was signed in the circumstances explained in paragraphs 7 and 8 of the petition. Learned counsel would submit that when he signed the consent affidavit, the petitioner did not read the date of the purported Will as 8th November, 2002 which was purely mistake on the part of the petitioner. It is alleged in paragraph (8) that the petitioner was married on 7th May, 1989 and that there were various disputes between the petitioner and his wife during the period when the instant petition was filed. Having two daughters, the petitioner was consistently under mental stress and trauma which still continues and the proceedings still are pending in the Family Court at Mumbai. Wife of the petitioner coerced the two daughters not to keep in touch with the petitioner. There was also litigation between one Patel India and the petitioner was ongoing when the probate petition was filed by the executor. It is stated that the petitioner therefore did not apply his mind with regard to the affidavit which was executed in support of the petition for probate which has been an oversight. The petitioner therefore seeks indulgence to permit him to agitate the grant of probate.

5. Learned counsel placed reliance on section 230 of the Indian Succession Act, 1925 in support of his submission that the renunciation by the executor could not be done orally and it could be done only in the manner prescribed in section 230. Learned counsel submits that the case of the petitioner falls under 'just cause' described under clauses (a), (b), (c) and (d) of section 263. Learned counsel would submit that since the fraud had been committed by the executor upon the petitioner, probate granted by this Court is liable to be revoked under section 263. Learned counsel placed reliance on the judgment of the Supreme Court in case of *Ramchandra Rambux vs. Champabai and others*, reported in *AIR 1965 SC 354* in support of his submission that if there are surrounding circumstances which creates suspicions in the mind of the Court, Testamentary Court cannot ignore such suspicious circumstances and cannot accept the Will as proved document.

6. It is submitted that though there is no prayer for condonation of delay in filing petition for revocation of probate, case is made out in the petition as to why there was delay of seven years in filing petition of revocation of probate.

7. Learned counsel appearing on behalf of the respondent on the other hand submits that the petitioner having filed consent affidavit cannot file petition for revocation of probate. It is submitted that the draft consent affidavit was circulated amongst all the legal heirs of the deceased including the petitioner. The petitioner had read the consent affidavit before affirmation before the officer of this Court. He had accompanied other signatories of the consent affidavit and was fully aware of the contents of the said affidavit. It is submitted that petition for grant was circulated to all the legal heirs and other executors. Reliance is placed on letter dated 7th December, 2002 and 3rd March, 2005 addressed by other two executors for renouncing their rights to apply for the probate. Both

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these letters are annexed to the affidavit filed by the respondent renouncing their rights to act as executors. It is submitted that in view of renunciation of the two executors appointed under the Will in question, other executor was entitled to file probate petition. It is submitted that renunciation by other two executors was thus in accordance with section 230 of the Indian Succession Act.

8. Learned counsel submits that probate was granted on 10th May, 2006 whereas the petition has been filed after seven years for revocation. It is submitted that Article 137 of the Schedule I of the Limitation Act would apply. Since application for revocation of probate has been filed after three years, petition itself would be barred by law of limitation. Learned counsel placed reliance on the judgment of the Division Bench of this Court in case of *Nina Agarwalla vs. Ashok Gupta* delivered on 10th May, 2013 in Appeal (L) No. 180 of 2013 and Appeal (L) No. 181 of 2013 [reported in 2013(4) Mh.L.J. 464] and in particular paragraph 13 of the said judgment. Paragraph 13 of the said judgment reads thus :—

13. The Appellant has not been able to show any evidence to establish that the citation was not served upon her. We find it difficult to accept on her mere statement that the citation was not served upon her, particularly in view of the records of the testamentary department of the Court and the fact that probate was granted more than 38 years ago. So far as the decisions of the Supreme Court in the matter of *Kunvarjeet Singh* (supra) is concerned, the same dealt with the issue of grant of probate and not with revocation of probate. In any case, in the facts of the present case in the absence of the Appellant being able to show that citations were not served upon her and she was kept in dark about the Will dated 28 March, 1964, the provision of section 263 of Indian Succession Act, 1925 is not satisfied. Moreover, one must keep in mind that a grant of probate by a Competent Court operates as a judgment in rem and once the probate to the Will is granted, then the said probated Will is good not only in respect of the parties to the proceedings, but against the whole world. Therefore, if the probate is granted, the same operates in rem and time runs from the date of the grant of the probate for purposes of limitation under Article 137 of the Limitation Act in proceedings for revocation of probate.

9. Learned counsel would submit that there is no prayer for condonation of delay in the petition for revocation of probate. It is submitted that even otherwise there is no case made out for condonation of delay in petition filed by the petitioner. Learned counsel would also place reliance on the judgment of the Calcutta High Court delivered on 10th September, 2012 in G.A. No. 3043 of 2010 in support of his submission that the party who has signed consent affidavit cannot be allowed to apply for revocation of probate unless his case falls under section 263 of the Indian Succession Act, 1925. It is submitted that the petitioner being an educated person cannot be allowed to raise such plea as raised in the petition at this stage. Reliance is also placed in some of the paragraphs of the said judgment in which Calcutta High Court has adverted to the statement of law declared by the Supreme Court in case of *Bihar State Electricity Board vs. M/s Green Rubber Industries Ltd.*, reported in (1990) 1 SCC 731 and in case of

Grasim Industries Ltd. vs. M/s Agarwal Steel, reported in *AIR 2010 SC (Supp) 291* and has applied the statement of law in the said judgment.

10. On perusal of the affidavit dated 20th April, 2005 filed by the petitioner in Petition No. 436 of 2005, it is clear that the petitioner had admitted that the deceased had left a Will dated 8th November, 2002 and had appointed three executors/executrix of the estate of the deceased. One of the executors had appointed M/s Rajani Associates, Advocates and Solicitors to apply for probate of the Will of the deceased. In paragraph (4) of the said affidavit, the petitioner has rendered his no objection and given his full and free consent that the probate be granted in favour of Mr. Subhash Chander Rewari without service of any citation/notice upon him and without justifying any surety in respect of his share in the estate of the deceased. It is not in dispute that the petitioner is a graduate. Explanation sought to be given in the petition and in particular paragraphs (7) and (8) for revocation of the probate is that there was dispute between the petitioner and his wife when the probate petition came to be filed by the executor and the petitioner having two daughters, was consistently under mental stress and trauma which continued in spite of proceedings pending in the Family Court. In my view such plea cannot be accepted at this stage after seven years. If the petitioner wanted to withdraw his consent affidavit, he could have made an appropriate application at the relevant time. It is not in dispute that the probate has been already issued as far as back as on 10th May, 2006. Petitioner did not take any steps to withdraw his consent affidavit at any point of time pursuant to the date of the order passed by this Court granting probate.

11. Supreme Court in case of *Bihar State Electricity Board, Patna and others vs. M/s Green Rubber Industries and others*, reported in (1990) 1 SCC 731 has held that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. Similar view has been taken by the Supreme Court in case of *M/s Grasim Industries Ltd. and another vs. M/s Agarwal Steel*, reported in *AIR 2010 SC (Supp) 291*. It is held that when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signature thereon, otherwise no signature on a document can ever be accepted. In my view, the petitioner being a graduate would not sign such consent affidavit without reading such affidavit or without applying his mind and without understanding the legal effect thereof. If the justification which is sought to be given by the petitioner is accepted by this Court and that also at this stage, there would be no legal sanctity of such affidavit already filed and accepted by this Court.

12. I am not inclined to accept the submission of Mr. Kantawala that such consent affidavit was filed in the circumstances alleged in the petition. It is not in dispute that the petition has been filed after seven years from the date of the grant having been issued by this Court. Article 137 Schedule I to the Limitation Act would be applicable to such application filed for seeking revocation of probate. There is no prayer for condonation of delay. On perusal of the averments made in the petition, I am of the view that even otherwise the delay in filing the petition has not been explained, petition deserved to be dismissed on the ground of limitation also.

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13. In my view since consent affidavit was filed by the petitioner after knowing and understanding the contents and effect thereof and existence of Will having been admitted, case of the petitioner does not fall under any of the cause described under section 263 of the Indian Succession Act, 1925. In my view, no case is made out for revocation of the probate. Reliance placed by Mr. Kantawala on the judgment of Supreme Court in case of *Ramchandra Rambux* (supra) is misplaced.

14. Perusal of the letters addressed by the other two executors clearly indicates that renunciation of executorship by them was in compliance with section 230 of Indian Succession Act, 1925.

15. It is stated by the learned counsel for the respondent that after obtaining probate, probate has been already acted upon by the respondent partly. Insofar as remaining directions issued by the testator in the Will are concerned, same are being implemented. Statement of the learned counsel is accepted.

16. In my view, petition is devoid of any merits and is accordingly dismissed with costs quantified at ₹ 10,000/- payable by the petitioner to the respondent within two weeks from today.

Petition dismissed.

EMPLOYMENT OF PROJECT AFFECTED PERSONS : CONSIDERATIONS

(B. P. Dharmadhikari and Ravindra V. Ghuge, JJ.)

KALPESH s/o ASHOK KOLTE and others

Petitioners.

vs.

STATE OF MAHARASHTRA and others

Respondents.

(a) **Constitution of India, Arts. 14 and 16** — *Public Employment to project affected persons — Such persons must compete and unless and until they compete amongst themselves, they cannot aspire for public service.* 2009(4) Mh.L.J. 961, Rel. (Paras 8 to 10)

(b) **Constitution of India, Art. 14** — *Petitioners “Project Affected Persons” selected by respondents 2 to 5 for employment after vocational training and qualifying in examination but not given appointment orders because they do not possess certification of registration as project affected persons issued by the office of Collector — No dispute about the status of petitioners — Insistence on certification of registration as project affected persons is unwarranted.* (Paras 5, 11 and 12)

For petitioners : *S. B. Talekar*

For respondent No. 1 : *K. M. Suryawanshi, AGP*

For respondent Nos. 4 and 5 : *Satish Godsay*

Case referred :

1. *Rajendra Pandurang Pagare vs. State of Maharashtra and others, 2009(4) Mh.L.J. 961*

(Paras 7, 8)

ORAL JUDGMENT

B. P. DHARMADHIKARI, J. :— Heard learned counsel for the respective parties.

W. P. No. 6195 of 2013 decided on 25-9-2013. (Aurangabad)