

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.817 of 2014****Order reserved on :26.11.2018****Order delivered on: 02.01.2019**

Jethmal Soni aged about 75 years, S/o Late Shri Mohanlal Soni r/o Nandai Road, In front of Purana Kanji House, Rajnandgaon – 491441 Tah & District Rajnandgaon (CG)

---- Petitioner**Versus**

1. Hariom Soni aged about 46 years S/o Shri Ranulal Soni, r/o Azad Chowk, Rajnandgaon – 491441 Tah & District Rajnandgaon (CG)
2. Anil Soni aged about 42 years S/o Shri Ranulal Soni Babu Chhotelal Chowk Dhamtari – 493773 Tah. & Distt. Dhamtari (CG)
3. Smt. Leela Soni, aged about 60 years, D/o Shri Ranulal Soni and W/o Shri Mohanlal Soni R/o Brahman Para, Dhamtari – 493773 Tah. & Distt. Dhamtari (CG)
4. Smt. Harki Soni, aged about 48 years, D/o Shri Ranulal Soni and W/o Shri Radhe Shyam Soni R/o Balaji Ward, Arvi, Wardha – 442001 Tah. & Distt. Wardha (M.S.)
5. Smt. Padma Soni aged about 45 years, Widow of Late Shri Ganesh Prasad Soni R/o Shahid Azad Chowk, Dhamtari – 493773 Tah. & Distt. Dhamtari (CG)
6. Chandresh Soni aged about 25 years, S/o Late Shri Ganesh Prasad Soni R/o Sahid Azad Chowk, Dhamtari – 493773 Tah. & Distt. Dhamtari (CG)

---- Respondents

For Petitioner	:	Mr.V.G.Tamaskar, Advocate
For Respondents	:	Mr.Rakesh Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. Shri Hariom Soni and five others (respondents herein) filed an application under Section 263 of the Indian Succession Act, 1925

(hereinafter called as 'the Act of 1925') for revoking the probate granted by Probate Court in favour of petitioner-Jethmal Soni in MJC No.23/98 on 13.7.99 stating inter-alia that they came to know about the said probate on 20.12.2013 and thereafter filed the application for revocation on 27.1.2014 and prayer was made for revoking the probate so granted in favour of the petitioner.

2. The present petitioner filed a preliminary objection stating that the respondents came to know about the probate in favour of the petitioner on 20.12.2013 in Case No.136/2013 (Hariom Soni v. Jethmal Soni and others) and the application for revocation ought to have filed within 90 days from the date of knowledge i.e. 20.12.2013 and as such, the application filed on 27.7.2014 is barred by limitation and it is liable to be rejected.
3. The respondents opposed that preliminary objection holding it to be untenable in law and stated that it is liable to be rejected.
4. The trial Court by its impugned order rejected the said preliminary objection finding no merit in the said objection and held that limitation for revocation of probate will be governed by Article 137 of the Limitation Act, 1963 (hereinafter called as 'the Act of 1963') and date of knowledge of admittedly is 20.12.2013 and therefore, application so filed is within the period of limitation.
5. Questioning the said order, objector Shri Jethmal Soni has filed this writ petition challenging the impugned order.
6. Mr.V.G.Tamaskar, learned counsel for the petitioner, would submit that the trial Court is absolutely unjustified in rejecting the

preliminary objection filed by the petitioner as the application for revocation of probate is hopelessly barred by limitation and therefore, the impugned order is liable to be set aside. He relied upon the judgment of the Patna High Court in the matter of In the Goods of Late Sudhendu Kumar Basu & others v. Amar Krishna Basu & others¹.

7. On the other hand, Mr. Rakesh Thakur, learned counsel for the respondents, would support the impugned order.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumscription.

9. The trial Court while deciding the preliminary objection has clearly recorded a finding that since no period of limitation is prescribed under the Indian Limitation Act, 1963 for filing an application under Section 263 of the Act of 1925 for revocation of probate, therefore, Residuary Article 137 of the Act of 1963 would attract and apply and since it was filed within that period after getting knowledge of probate on 20.12.2013 and consequently overruled the preliminary filed by the petitioner.

10. Admittedly, no period of limitation for filing an application for revoking a probate under Section 263 of the Act of 1925 is advisedly prescribed under the Act of 1963, therefore, Residuary Article 137 of the Act of 1963 would apply.

11. The provision contained in Article 137 of the Act of 1963 is as follows:-

¹ AIR 2016 PATNA 15

Description of application	Period of Limitation	Time for which period begins to run
Any other application for which no period of limitation is provided elsewhere in this division	3 years	When the right to apply accrues

12. The Supreme Court in the matter of The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma² while overruling its earlier decision i.e. Town Municipal Council, Athani v. Presiding Officer Labour Court, Hubli³ held that Article 137 of the Act of 1963 will apply to any petition or application filed under any Act to civil court. It is not confined to applications contemplated by or under the Code of Civil Procedure and Article 137 of the Act of 1963 would applicable to petition filed under Section 16(3) of the Telegraph Act claiming enhanced compensation. It was held as under:-

“20. The provisions in the Telegraph Act which contemplate determination by the District Judge of payment of compensation payable under Section 10 of the Act indicate that the District Judges acts judicially as a court. Where by statutes, matters are referred for determination by a Court of Record with no further provision the necessary implication is that the court will determine the matters as a court. (See National Telephone Co. Ltd. v. The Postmaster-General, 1913 AC 546). In the present case the statute makes the reference to the District Judge as the Presiding Judge of the District Court. In many statutes reference is made to the District Judge under this particular title while the intention is to refer to the Court of the District Judge. The Telegraph Act in Section 16 contains intrinsic evidence that the District Judge is mentioned there as the court of the District Judge. Section 16(4) of the Telegraph Act requires payment into the court of

² AIR 1977 SC 282

³ AIR 1969 SC 1335

the District Judge such amount as the telegraph authority deems sufficient if any dispute arises as to the persons entitled to receive compensation. Again, in Section 34 of the Telegraph Act reference is made to payment of court-fees and issue of processes both of which suggest that the ordinary machinery of a court of civil jurisdiction is being made available for the settlement of these disputes. Section 3(15) of the General Clauses Act states that the District Judge in any Act of the Central Legislature means the Judge of a principal civil court of original jurisdiction other than the High Court in the exercise of its original civil jurisdiction, unless there is anything repugnant in the context. In the Telegraph Act there is nothing in the context to suggest that the reference to the District Judge is not intended as a reference to the District Court which seems to be the meaning implied by the definition applicable thereto. The District Judge under the Telegraph Act acts as a civil court in dealing with applications under Sec. 16 of the Telegraph Act.

21. The changed definition of the words "applicant" and "application" contained in Sections 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other Articles in Part I of the third division. This Court in Nityananda Joshi's case (AIR 1970 SC 200) (supra) has rightly thrown doubt on the two Judge Bench decision of this Court in Athani Municipal Council case (AIR 1969 SC 1335) (supra) where this court construed Article 137 to be referable to applications under the Civil Procedure Code. Article 137 includes petitions within the word "applications." These petitions and applications can be under any special Act as in the present case.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani Municipal Council case (AIR 1969 SC 1335) (supra) and hold that Article 137 of the 1963 Limitation Act is not

confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.”

13. Thus, from the principle of law laid down by the Supreme Court in T.P. Kunhaliumma (supra), it is quite vivid that Article 137 of the Act of 1963 applies to any petition or application filed under any Act and its application is not confined to application filed under the provisions to the CPC.

14. The application under Section 263 of the Act of 1925 for revocation of probate is concerned, that is not governed by any specific Article of the Act of 1963 as no limitation has been prescribed for filing of application for probate under the Act, therefore, Residuary Article 137 of the Act of 1963 would apply for revocation of probate under Section 263 of the Act of 1925.

15. Reverting to the facts of the present case in light of above-stated discussion, it is not in dispute that learned District Judge while dealing with the application in question was acting as civil court and therefore, the provisions of Article 137 of the Act of 1963 clearly govern the situation. The respondents could file the application for revocation within three years from the date when the right to apply for setting aside of probate, accrued to them. According to the petitioner himself, the respondents had come to know about grant of probate in his favour on 20.12.2013 when an

application under Order 6 Rule 17 of the CPC was filed in Civil Suit No.36-A/2013 (Hariom Soni v. Jethmal Soni and others). It is thus right to apply accrued to the respondents only on 20.12.2013 and they have filed an application for revocation of probate on 27.1.2014 well within the period of three years when the right to apply for setting aside accrued to them. Thus, the learned District Judge is absolutely justified in rejecting the preliminary objection filed by the petitioner, in which I do not find any perversity warranting interference in exercise of jurisdiction under Article 227 of the Constitution of India.

16. Accordingly, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s). A copy of this order be sent to the trial Court by fax/e-mail for expediting the original application as same is pending since 27.7.2014.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No.817 of 2014

Petitioner Jethmal Soni

Versus

Respondents Hariom Soni and others

Head-note

(English)

The application under Section 263 of the Indian Succession Act, 1925 for revocation of probate is governed by Article 137 of the Indian Limitation Act, 1963.

(हिन्दी)

प्रोबेट के प्रतिसंहरण हेतु भारतीय उत्तराधिकार अधिनियम, 1925 की धारा 263 के अंतर्गत प्रस्तुत आवेदन, परिसीमा अधिनियम, 1963 के अनुच्छेद 137 से शासित होता है।