



First Civil Judge, Class-I, Shivpuri, Madhya Pradesh in Misc. Case No.08 of 2014 as per order dated 14<sup>th</sup> October 2014 as upheld by the Fourth Additional District Judge, Shivpuri, in Misc. Appeal No.01 of 2018 in terms of order dated 10<sup>th</sup> January, 2019, and by the High Court of Madhya Pradesh at Gwalior, in Civil Revision No.376 of 2019 by order dated 31<sup>st</sup> October 2019.

3. The respondents No.1 and No. 2, namely Renu and Jyoti Maheswari respectively, had filed an application under Section 372 of the Indian Succession Act, 1925<sup>2</sup> to be able to receive the retiral benefits of their father late Mr. Omprakash Maheshwari, who passed away on 4<sup>th</sup> April 2011, from Respondent No.3-

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<sup>2</sup> 372. Application for certificate.-

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, (5 of 1908.) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:--

(a) the time of the death of the deceased;

(b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;

(c) the family or other near relatives of the deceased and their respective residences;

(d) the right in which the petitioner claims;

(e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code. (45 of 1860.)

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

Madhya Pradesh Central Electricity Distribution Company, where the deceased had superannuated after working as a lineman. It was their contention that they were the daughters of the deceased and that their mother (his wife), namely Asha Maheswari, had predeceased him on 3<sup>rd</sup> October 2006. Respondent No.3 opposed this on the ground that in the official records the name of his wife is one Mrs. Malti Maheswari and therefore, only she is entitled to the benefits as may be payable by them. The Court, having considered evidence, granted the Succession Certificate.

4. It was to set aside this Certificate that the application under Order IX Rule XIII CPC was filed since Mrs. Malti Maheshwari, did not appear before the concerned court. The First Civil Judge, Class-I, Shivpuri, rejected the application observing that an appeal had been preferred against the grant of Succession Certificate in which Mrs. Malti Maheshwari appeared through counsel. As such, they could not lay challenge thereto, by way of an application under Order IX Rule XIII CPC.

5. On appeal, the District Judge, upheld the above order observing that the evidence on record clearly showed that Mrs. Malti Maheshwari, was duly served and the notice mentioned the date of hearing as 25<sup>th</sup> August 2011. No reason has been put forth for non-appearance on the appointed day. Still further, it was observed that since she had been party to the appeal against order granting Succession Certificate, it was not open for her to subsequently challenge the same by way of an application under Order IX Rule XIII CPC.

6. In terms of the impugned judgment, the High Court dismissed the civil revision directed against the above orders observing as follows:-

“(11) So far as the applicant no.1 is concerned, the respondents no.1 and 2 in their application under Section 372 of Indian Succession Act have specifically stated that it is the applicant no.2 who has moved an application for payment of dues of the deceased Om Prakash Maheswari. It was not the case of respondents no. 1 and 2 that the applicant no.1 had also staked his claim over the dues of Om Prakash Maheswari. Once, the applicant no.1 had not claimed any right in the estate of late Om Prakash Maheswari, then it cannot be said that either he was a necessary party or any prejudice has been caused to him because of lapse in the public notice. Under these circumstances, this Court is of the considered opinion that the Courts below did not

commit any mistake in rejecting the application filed under Order 9 Rule 13 of CPC.”

7. It is in the aforesaid circumstances that the matter has travelled up to us. Order IX Rule XIII CPC to state the obvious is an application made to set aside an *ex parte* decree. It is also a matter of record that they appeared in the appeal preferred against the grant of Succession Certificate. The primary requirements of an application under Order IX Rule XIII CPC is whether the summons were duly served and whether there is sufficient cause that prevented the party from appearing in Court [*See Neerja Realtors Pvt. Ltd. vs. Janglu*<sup>3</sup> and *Parimal vs. Veena*<sup>4</sup>].

8. It is an undisputed fact that appellant no. 1 was a minor, aged about 12 years, at the time when the respondents initiated proceedings for grant of a Succession Certificate. A public notice was issued pursuant to the orders of the learned Additional District Judge; however, the said notice did not clearly specify

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<sup>3</sup> (2018) 2 SCC 649

<sup>4</sup> (2011) 3 SCC 545

that the proceedings were initiated on account of the death of Late Mr. Omprakash Maheshwari.

The observation of the learned Additional District Judge, *vide* order dated 10.01.2019, to the effect that the minor could have, upon publication of the public notice, impleaded himself as a party and raised objections, is wholly erroneous and perverse. Being a minor at the relevant time, appellant no. 1 was legally incapacitated from taking such steps. Furthermore, the respondents were fully aware of the existence of appellant no. 1 as one of the legal heirs. Despite such knowledge, no steps were taken to ensure the appointment of a lawful guardian to represent the minor in the proceedings. It is only upon attaining majority that appellant no. 1 acquired the legal capacity to challenge the said proceedings and accordingly initiated the present action. There is nothing on record to suggest any collusion between the minor and his mother.

Section 372 of the Indian Succession Act, 1925 governs applications for grant of succession certificates, whereas Section 383 provides for revocation of such certificates on specified

grounds. Where an application is defective or material facts have been suppressed or misstated, the certificate issued pursuant thereto is liable to be revoked under Section 383 of the Act. The factual matrix of the present case squarely justifies invocation of the said provision.

Additionally, there are material discrepancies in the particulars furnished in the original application. The mother of the minor, who is the widow of Late Mr. Omprakash Maheshwari, was incorrectly described as the wife of one Jitendra Jain alias Jinna. No explanation has been provided for such a serious mis-statement, nor is there any material on record establishing any connection between appellant no. 2 and the said Jitendra Jain. These inaccuracies further vitiate the proceedings. It is also pertinent to note that the minor was never impleaded as a party in the succession proceedings, thereby depriving her of an opportunity to be heard.

The settled principle of law is that the scope of proceedings under Section 96 of the Code of Civil Procedure and Order IX Rule XIII CPC are distinct. Order IX Rule XIII CPC confers a

wider jurisdiction, enabling the applicant to demonstrate sufficient cause for non-appearance and seek setting aside of an *ex parte* decree (*Bhanu Kumar Jain v. Archana Kumar*).<sup>5</sup>

9. In the present case, the appellant filed an application under Order IX Rule XIII CPC after dismissal of the appeal. In view of the facts and circumstances discussed hereinabove, the application deserves to be allowed. The High Court erred in concluding that the minor had not asserted any right through Late Mr. Omprakash Maheshwari, and further erred in holding that she was neither a necessary nor a proper party. The finding that no prejudice was caused to the minor is unsustainable in law. Further, the High Court also failed to appreciate that a minor cannot be expected to respond to a public notice or initiate legal proceedings independently. The conclusions drawn by the courts below suffer from serious legal infirmities.

10. Accordingly, the appeal is allowed. The impugned order is quashed and set aside. Consequently, the application under Order IX Rule XIII CPC is allowed. The *ex parte* order granting the

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<sup>5</sup> (2005) 1 SCC 757-3J

Succession Certificate is hereby quashed and set aside. The matter is restored to its original number. The parties are directed to appear before the competent court dealing with the succession certificate proceedings on a date to be fixed by the court.

11. Considering that the matter pertains to the year 2011, the parties are directed to extend full cooperation to ensure expeditious disposal. The concerned Court is requested to decide the matter preferably within a period of one year from the date of appearance of the parties.

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

.....**J.**  
**(SANJAY KAROL)**

.....**J.**  
**(AUGUSTINE GEORGE MASHI)**

NEW DELHI  
April 1, 2026