

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

R.A No. 132 of 2022

Applicant : Shr. Ratan Bai through
Mr. Zulqarnain Talpur, Advocate

Respondents : Rajesh Kumar and others
Mr. Allah Bachayo Soomro, Addl.A.G.

Date of hearing
and Order : 22.08.2022

ORDER

ADNAN-UL-KARIM MEMON, J. Through instant revision application, the applicant has called in question the order dated 28.05.2022 passed by learned District Judge Badin on application under Section 151 CPC moved in Succession Application No. 05 of 2022 whereby the learned Judge while dismissing the listed application declined to accept the P.R bond instead of solvent surety, hence the present Civil Revision Application.

2. Brief facts of the case as per memo of Revision Application are that applicant filed Succession Application No. 05 of 2022 with a prayer to grant succession certificate in favor of the applicant in respect of the amount i.e. 4,18,11,333.04/- lying in the accounts of his deceased husband Hameraj Mal. The said Succession Application after seeking reports from the concerned officials was allowed with direction to the applicant to furnish solvent surety in the equal amount vide order dated 10.5.2022; and, since the applicant could not arrange the surety for such huge amount, hence she moved an application under Section 151 CPC praying the trial court to accept the PR bond instead of solvent surety as the applicant could not arrange surety for such huge amount. The application was dismissed, hence the instant Civil Revision Application.

3. Mr. Zulqarnain Talpur learned counsel for the applicant has submitted that the applicant Inspite of hectic efforts could not arrange the surety and the learned trial Judge committed illegality while dismissing the application of the applicant who is legally entitled to withdraw the amount left by her deceased husband; that learned trial Judge committed illegality by observing that huge amount cannot be released on simple PR bond; on the contrary, it is right of the applicant which she attained on the death of her husband; that financial condition of applicant is not sound hence she is unable to arrange the solvent surety and withholding the right of the applicant on the technical ground is not called for; that the scheme of law is to provide facility to the public and withholding the right on technical ground is against the law and justice. He lastly prayed for allowing the instant Civil Revision Application.

4. All the legal heirs mentioned in the succession application have appeared before this Court in terms of the earlier order passed by this court and submitted in categorical terms that they have no objection if the instant revision application is allowed, in terms that the applicant may be allowed to furnish PR Bond in the like amount to the satisfaction of learned trial court, instead of security deposit of like amount. On my query, the applicant, who is present along with his counsel, stated that there are no liabilities of the deceased that require settlement as such furnishing a PR bond will serve the purpose, just to distribute the succession amount amongst the legal heirs under the law and that exercise is required to be made by the learned trial court. The applicant lastly prayed that she may be exempted from furnishing sureties as per Rules and succession certificate be issued in her name on the execution of personal bond by her before the trial court. Her learned counsel submits that since this is an uncontested matter, no one has come forward to oppose this revision application and all other legal heirs have submitted their no objection in favor of the applicant, she may be exempted from furnishing surety for the grant of succession certificate in her name just to distribute the amount amongst the legal heirs. Prima-facie the proposal seems to be viable, in terms of the ratio of the order passed by this Court in the case of *Kamran Mirza V/S Moazzam Mirza*, **PLD 2014 Sindh 500**.

5. Primarily, the object of requiring surety is to secure the interest of any such person who may have a share, interest, or claim in the movable or immovable assets left by the deceased, such as a legal heir whose name has not been disclosed to the Court or who is not before the Court, a minor legal heir or a legal heir of unsound mind whose share is retained by the Court, or a legal heir whose share is not distributed to him under law after the grant of Letters of Administration or Succession Certificate, or a creditor of the deceased.

6. In my humble opinion, if the Court is satisfied that none of the above situations exist in the case, it may dispense with the furnishing of surety while granting Letters of Administration or Succession Certificate.

7. I am also of the view that such power of the Court is discretionary and the person applying for Letters of Administration or Succession Certificate cannot seek such discretion in his favor as a matter of right. The exercise of discretion shall depend upon the facts and circumstances of each case. However, such discretion should be exercised liberally keeping in view the hardship that may be faced by the legal heirs of the deceased in furnishing surety as portrayed by the applicant in the present case, who may not have any other or additional property of their own to offer as surety. In some cases, the legal heirs may not be in a position to offer even the inherited property as security.

8. Therefore, I am of the considered view that the discretion of dispensing with the requirement of furnishing surety can be exercised in favor of the applicant by the learned trial court subject to all just exceptions as provided under the law.

9. Since all the formalities have already been completed by the learned trial Court as per rules, there appears to be no impediment in allowing the instant revision application. Accordingly, the instant revision application is allowed, subject to her executing a personal bond equivalent to the value of the amount left by the deceased before the learned trial court. The learned trial court shall ensure the distribution of the subject amount amongst all legal heirs in accordance with their respective share, so far as the share of minors if any, the learned trial court shall take steps in this regard under the law.

JUDGE

Karar_Hussain /PS