

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 1861-2021

Tahir Mehmood Abbasi

Versus

Civil Judge, 1st Class (West), Islamabad another.

| S. No. of order/ proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|-------------------------------------|-----------------------------------|--|
| (01) | 27.05.2021 | Ch. Hasan Murtaza Mann, Advocate for the petitioner. |

MOHSIN AKHTAR KAYANI J. This petition is challenging the order dated 25.01.2021, whereby learned Civil Judge, 1st Class (West), Islamabad has framed the issues on the objections filed by respondent in the pending succession application filed by petitioner.

2. Learned counsel for the petitioner inter-alia contends that the petitioner has filed succession application under Section 372 of Succession Act, 1925 after the demise of his father on behalf of all the legal heirs including respondent No.2, but respondent No.2 has filed an objection petition with separate claim that his late father has borrowed an amount of Rs. 11,160,522/- on different occasions through pay orders, as such he is entitled for the said amount, beside the cash amount settled through succession proceedings; that the learned Trial Court has framed the issues through the impugned order on the objection petition of the respondent No.2 and fixed the date for recording of evidence, which is not permissible in terms of

Section 373 of Succession Act, 1925. The petitioner has relied upon case law reported as **PLD 2019 Islamabad 238 (Sofia Ashfaq Vs. Haseeb Ashfaq Bhatti), PLD 2015 Islamabad 30 (Malik Muhammad Rafique Vs. Mst. Tanveer Jahan), 1987 CLC 262 (Muhammad Javed Akhtar Vs. Public in large), 2017 YLR 150 (Liaqat Zaman Khan Vs. Mst. Tzaam Akhtar).**

3. Arguments heard and record perused.

4. Perusal of record reveals that petitioner is aggrieved with the procedure adopted by the learned Trial Court, whereby issues were framed in the pending succession application filed by the petitioner for settlement of legacy of deceased Ali Asghar, his father. The primary question raised in the instant petition is whether the Trial Court can frame issues and record evidence, despite the fact that Section 373 of Succession Act, 1925 provides the process to settle the claim in a summary manner.

5. In order to resolve the controversy, it is appropriate that Section 373 of the Succession Act, 1925 is reproduced, which is as under:-

373. Procedure on application. (1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the court- house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,

and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

6. While going through the plain reading of above mentioned provision, there is no cavil to the proposition that Succession Act, 1925 provides a summary procedure for grant of succession certificate, however, Section 373(3) highlighted the factum of intricate and difficult questions raised in the pending application of succession, which could only be resolved by the Court. In such scenario, the Trial Court has to determine the matter in summary manner and grant the certificate to the applicant *“if he appears to be the person having prima facie best title thereto”*, this aspect left nothing in favour of petitioner, rather it demonstrates the discretion on the basis of available record to the Trial Court to exercise the jurisdiction in summary manner or otherwise and may or may not issue a certificate subject to available record while considering the facts of each case.

7. Similarly, Section 383(e) provides the revocation of certificate in cases where certificate was defective in substance or certificate was obtained fraudulently by making false suggestion or by concealment from the Court of something material to the case or in ignorance or inadvertently or certain debts or securities specified in the certificate have been settled through decree of a competent authority in a suit, this aspect leads to an irresistible conclusion that the succession certificate under Succession Act, 1925 is not a conclusive document to settle the claims rather intricate and disputed questions of facts could be resolved in competent Court through a decree in a regular trial, in such eventuality the Court dealing with the succession application if comes to conclusion that applicant has been found most suitable and entitled person, may grant certificate subject to requisition of security and at the same time, the Court can also direct the parties to approach the competent Civil Court qua the disputed amount or the questions which could not be resolved in the succession proceedings.

8. I have gone through the case law referred by the counsel for the petitioner in this regard, which deals with the proposition where succession certificate have been issued and matter subsequently been settled through Civil Court, especially when there is no bar on decision qua any question of right between any parties in terms of Section 387 of Succession Act, 1925, but on the other hand, Section 384 of the Act provides the concept of appeal against granting,

refusing or revoking of a certificate, which demonstrate that any interlocutory order could not be assailed nor any remedy has been provided to that effect, therefore, question of maintainability is a primary issue to be settled in this case.

9. While considering the above issues and legal position, I am of the view that the learned Trial Court has not yet adjudicated upon the succession application nor the parties have led their evidence in compliance of order passed by learned Trial Court, though the order itself demonstrate that the Trial Court is conducting the proceedings in a summary manner not as a regular trial, even the petitioner has made another request before this Court for issuance of direction to learned Trial Court for release of the undisputed amount among the parties in accordance with law.

10. In view of above, instant writ petition stands **DISPOSED OF** with the direction to learned Trial Court to conclude the succession proceedings in accordance with law within period of thirty (30) days by all means under intimation to this Court. However, petitioner may raise all his contentions including release of undisputed amount before the learned Trial Court, who shall also consider the request of the petitioner accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE