

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C.,
ARAKALAGUD**

Crl misc . No.200/2022

Petitioner : Savithramma

Vs

Respondent : The Tahasildar
Arakalagud

ORDERS

This petition has been filed U/Sec.13(3) of the registration of Births and deaths Act 1969 for an order from this Court i.e., the Judicial Magistrate of first class for the delayed registration of Birth/Death i.e., after one year of its occurrence. This parent Act has been amended by way of the registration of Births and Deaths (Amendment) Act 2023. As per Sec.1(2) of the registration of Births and Deaths (Amendment) Act 2023 the Central Government has notified the amendment act in the official gazette on 13.09.2023 and fixed the date as 01.10.2023 on which the amendment Act has to come into force. From this it is clear that, registration of Births and Deaths (Amendment) Act 2023 has come into force on 01.10.2023.

In this amendment Act, at Sec.13(3) the Jurisdiction is vested with the magistrate of

first class has been ousted and the jurisdiction has been conferred on the district magistrate or Sub-Divisional Magistrate or an Executive Magistrate authorized by the District Magistrate. In other words, the forum has been changed from the Judicial Magistrate of first class to the District Magistrate or Sub divisional magistrate or an Executive magistrate authorized by the District Magistrate.

The only question arised before this Court is that, what about the petitions which are already filed before this Court U/Sec. 13(3) of registration of Births and Deaths Act 1969, before the amendment Act 2023 came into force? In simple words what would be the fate of the petitions which are pending before this Court?

Now here in the amendment Act 2023, it is neither mentioned that, this amendment Act that too section 13(3) will be having the retrospective effect or prospective effect.

It is well settled law that, every amendment to procedural law will be having retrospective effect and every amendment to substantial law will be having prospective effect unless it is intended otherwise by the legislature. However, the only exception is an amendment to substantive criminal law cannot be given retrospective effect, because of article 20(1) of the Indian Constitution. Be that, as it may the

question is whether the petition filed U/Sec. 13(3) of the registration of Births and Deaths Act 1969 is criminal in nature as it will be registered as criminal miscellaneous petition?

The obvious answer to this question is in the Negative. Because, whether the proceedings are civil in nature or Criminal in nature has to be decided on the touchstone of punishment and certainly and absolutely the concept of punishment is totally unknown to the registration of Births and Deaths Act 1969, Therefore, it has to be held that, it is Civil in nature notwithstanding the fact that, the judicial magistrate of first class is entertaining the petition. Further it is well settled law that, it is not the forum which decides the nature of the petition rather it is the relief (Punishment is there or not) in the petition which decides the nature of the petition. Even for the amendment with regard to Criminal procedural law it is deemed that, it will be having retrospective effect.

With regard to amendment in change of forum, the question arises that, it is a procedural law or substantive law ? At this juncture I would like to rely upon ruling of the **Hon'ble Supreme Court of India reported in (2013) 14 SCC 696** wherein it was held as here under;

i) A statute which affects substantive rights is presumed to be prospective operation unless made retrospective either expressly or by necessary intendment whereas a statute which merely affects procedure unless such a construction is textually impossible is presumed to be retrospective in its application should not be given an extended meaning and should be strictly confined to its clearly defined limits.

ii) Law relating to forum and limitation is procedural in nature whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

By referring to the aforesaid ruling of the Hon'ble Appellate Court, the Hon'ble High Court of Madhya Pradesh at Jabalpur in 2nd appeal No.785/2023 (DD on 02.05.2023) has held that "change of forum is procedure law".

In the case of SEBI V/s. Classic Credit Ltd., reported in (2018) 13 SCC (1) wherein the Hon'ble Supreme Court of India has held that, "Change of forum being procedural, the amendment of the forum would operate retrospectively".

From these authorities it is evident that, law relating to change of forum is a procedure law and in the absence of any express intention or by necessary implication of the legislature it has be presumed to be retrospective in its operation. As mentioned above it is not the remedy U/Sec.13(3) of the registration of Births and Deaths Act has been changed. But only the forum has been changed from the Judicial Magistrate of first class to District Magistrate or the Sub Divisional Magistrate or an Executive Magistrate authorized by the District Magistrate.

This operation of amendment Act 2023 has to be certainly construed to have the retrospective operation. Therefore, right from 01.10.2023 this Court seizes jurisdiction even with regard to pending matters.

As a result the matter is hereby disposed off for want of jurisdiction with the liberty to the petitioners to approach the concerned District magistrate or Sub Divisional Magistrate or an Executive magistrate authorized by the District Magistrate as per Sec.13(3) of the registration of Births and Deaths (Amendment) Act 2023.

The office is hereby directed return all the original documents to the petitioners or their

counsel upon proper verification by obtaining the signature on the Order sheet.

**C/c. Civil Judge & JMFC.,
Arakalagud.**