

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on : 18.01.2011*
Pronounced on: 14.02.2011

+ **FAO 240/2004**

USHA DEWANI & ANR. Appellants
Through: Mr.M. Wadhwani, Advocate

VERSUS

PARAS RAM T. DEWANI Respondent
Through: Mr.V.B.Andley, Sr.Advocate with
Mr.Rajinder Mathur, Advocate

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **MOOL CHAND GARG, J**

1. This appeal arises out of an order dated 06.05.2004 passed by Ld. ADJ in probate case granting probate of the Will dated 20.04.1975 alleged to have been executed by deceased Man Mohan Dewani s/o Sh. Tirath Dass Dewan in favour of the respondent, Sh.Paras Ram Tirath Dewani.

2. The appellants are Ms.Usha Dewani widow of Sh.Man Mohan Dewani and his daughter Ms.Shirein.

3. The brief facts leading to filing of present appeal are that the testator lived in United States of America with his wife. A daughter was also born to them. He expired on 19.06.1976. The respondent who is the brother of the deceased testator claimed that a Will was executed by the testator on 20.04.1975 appointing the respondent as the sole executor of the Will. A perusal of the Will shows that the testator was the absolute owner of property bearing No. 86-87, Model Basti, Delhi and was also running Filmistan Photo Studio in a portion of the sold property as proprietor thereof. As per the will, the testator bequeathed the abovementioned property and the business to the respondent while

his 1/5th undivided share in house no. III-G/26, Lajpat Nagar, New Delhi was bequeathed in favour of his wife on the condition that she'll receive this share if she came to India and settles in India otherwise her share had to go to the two brothers of the testator, namely, Shri Hassa Ram and Shri Gobind Ram.

4. The appellants filed their objections opposing grant of probate petition on the ground that the petition was barred by limitation and that Will dated 20.04.1975 was a forged and fabricated document. It was alleged that some blank papers signed by the testator for emergency use were misused by the respondent for writing the Will on the same. Another important ground on which objection was raised was that the testator being a young man aged 35 years was having sound health and hence no occasion arises for a young man to execute a Will at such an early age. The objectors have also claimed that the signature of one of the attesting witness i.e. Shri Hassa Ram (brother of the testator) were forged and not genuine.

5. In reply to the objections, the main ground taken up by the respondent was that though he was in Government service, after communication with the objectors and on being reassured by the objector that she had no interest in the property of the deceased testator in Delhi, he resigned from his job to look after the business and property. The respondent further stated that he cleared up all of the testator's tax liabilities from his own pocket.

6. On the pleadings of the parties, the Ld. ADJ framed the following issues:-

- “(1) Whether the deceased Sh. Man Mohan Dewani had executed Will dated 20.04.1975 in the presence of the witnesses and while in sound and disposing mind?
- (2) Whether the petition is time barred?
- (3) Relief.”

7. With regard to the first issue, the respondent examined Shri V.D. Banati, one of the attesting witnesses to the Will, as PW1, who testified that the attesting witnesses and the testator had signed in presence of each other and that the testator was possessed of sound mind at the time of making the Will. Further during cross examination, PW1 has denied the suggestion that the will was a forged will.

8. In addition to examining PW1 Shri V.D.Banati, the respondent examined himself as PW-2. The other witnesses examined on behalf of the respondent are PW-3 Sh.Jasbir Singh, Dealing Assistant from Ministry of Surface Transport; PW4 Sh.S.S.Arora, PW5 Shri Hari Singh, Record Keeper from the office of Assistant Collector, Sadar Paharganj Zone, MCD; PW-7 Sh.S.S.Arora and PW-8 Mrs.R.K.Vij, Examiner of questioned documents.

9. On the other hand, the appellant examined herself as RW1 and RW2 Sh.S.P.Singh, Handwriting Expert

10. The basic objections taken up by the appellant before the Id. ADJ in objecting to the grant of probate were two fold i.e. neither the will in question was signed by Sh.Man Mohan Dewani, the deceased testator, nor it was attested by Hass Ram Dewani, the second attesting witness. In addition to that, they had also been claiming that there was no occasion for the testator to execute the Will in such a young age i.e. he was only 35 years besides raising the issue of delay in filing the probate petition.

11. While accepting the execution of the will by the deceased testator on the basis of the statement of Shri V.D.Banati, the Id. ADJ has accepted the case of the respondent with regard to the reasons for execution of the will by late Shri Man Mohan Dewani at such young age on account of his health problems.

12. The Id. ADJ while considering the handwriting expert's reports submitted by both sides has also taken use of his own expertise in having perused the admitted signatures by the parties and the signatures of the deceased on the will in question. He opined that will was signed by the deceased testator and it was attested by two witnesses. There was no evidence led on behalf of the appellant regarding the signatures of Hassa Ram Dewani who is the second attesting witness and therefore, taking into consideration other circumstances and the statement of Shri V.D.Banati as also the opinion formed by the Court regarding the genuineness of the handwriting of late Shri Manmohan Dewani, the Id. ADJ granted probate of the Will in favour of the respondent.

13. Before this court also, the objections taken by the appellant have been highlighted. The emphasis by learned counsel of the appellant is that Will in question was not signed by late Shri Man Mohan Dewani and Shri Hassa Ram.

14. Before giving my observations regarding the arguments taken up by the appellant also in the written arguments, I may take note of some of the observations made by ld. ADJ regarding the report of the handwriting expert. In this regard, the ld.ADJ has not attached any importance to the report of the handwriting expert Ex. PW8/1 produced by the appellant and Ex. RW2/1 produced by the respondent. With regard to Issue No.1, the ld.ADJ has observed as follows:-

“25. On the top of it, PW1 Shri V.D.Banati has duly proved the execution of the will in accordance with the provisions of section 63 of the Indian Succession Act. Nothing was brought in his cross examination to discredit his testimony. A suggestion was given to PW1 Shri V.D Banati during cross examination that wife of the testator was not on speaking terms with this witness. Not a word was stated in this regard by respondent no.5 when she entered the witness box as RW1 and thus the case of the respondent that this witness became a party to the forgery because of strained relations with respondent no.5 was abandoned by respondent no.5. Respondents were not sure of their case since the very beginning. In the Objections, they took up the plea that on the Will dated 20.04.1975 the signatures of the testator and Shri Hassa Ram were forged. Later on it was stated in the Objections that certain blank papers were available with the petitioner and the said papers were misused for writing this Will on the same. This is true that a defendant can take an alternative plea in support of his defence but sometime one plea is destructive of the other as is in the present case. If the blank papers containing signatures of the testator were misused for writing the Will, the signatures were genuine which runs counter to the plea of the respondent no.5 that signatures of Shri Man Mohan Dewani on the Will dated 20.4.1975 were forged. Learned Counsel for the respondents also drew my attention to the signature of Shri Hassa ram on the Will Ex.PW1/1 as also his signature on the letters written by him to respondent no.5 and urged that there is lot of difference between two sets of signatures. I have already observed above while dealing with the signatures of the testator on the Will, on his passports and the credit cards as also on the letters Ex.RW1/P1 and Ex.RW1/P2 that the admitted signatures on the letters Ex.RW1/P1 and Ex.RW1/P12 were entirely different from the admitted

signatures on the passports and the credit cards. People sign on different documents looking to their importance and utility in different moods and there may, therefore, be apparent difference between different signatures of the same person. The signature of Shri Hassa Ram were duly identified by PW1 Shri V.D. Banati as also by the petitioner. I see no reason to disbelieve them in the circumstances narrated above.”

15. Thus, the Id. ADJ concluded that:-

“27. In view of foregoing discussion, I am of the considered opinion that the Will dated 20.4.1975 Ex.PW1/1 was duly executed by the testator in presence of Shri V.D. Banati and Shri Hassa Ram while the testator was in sound disposing state of mind. The issue no.1 is accordingly decided in affirmative.”

16. While deciding Issue No.2 the Id. ADJ observed that:-

“ 28. It was held by Hon'ble Delhi High Court in Pamela Manmohan Singh Vs. State, (2000) RLR 137 that Article-137 of the Limitation Act applies to the applications for grant of probate/administration. It was observed that the application must be filed within a period of three years when the right to apply accrues. The period of three years, however, would commence at least from the date on which a legatee under a Will could be justifiably ascribed with the knowledge that the Will on which his claim is founded is likely to be disputed by the other persons especially the natural heirs of the testator. His Lordships quoted a hypothetical case where a Will had been executed in Delhi in the year 1950. The bequest made and dealt with therein may not have come into any dispute for several decades, it could be that some legatees were in possession of the properties with the tacit permission or approval of the other legatees, which approval was subsequently withdrawn. So long as the right of any particular legatee are to emanate and flow from the Will, probate proceedings ought to be filed within three years from this conjectural withdrawal of the permission.

29. In the instant case, it is nowhere the case of the respondents that they had ever objected to the possession of the petitioner or raising of construction on the property subject matter of the Will. The petitioner has come out with the case that he had applied for grant of probate of the Will as he wanted to expand the business to raise loan against the property subject matter of the Will. Applying ratio of Pamela Manmohan Singh Vs. State (supra), the petition is clearly within limitation. The issue no.2 is accordingly decided against the respondents.”

17. According to the respondent, the letter dated 9.7.1976 Ex.RW1/P1 the objector had given the details of how the testator had breathed his last in the hospital. The last paragraph thereof shows that the objector was aware of the Will and had clearly stated that she has no interest in the property. The last paragraph of the aforesaid letter is reproduced hereunder:-

“I had started this letter Friday but could not finish it. I looked in Manu’s papers but could not find anything. Please do send me necessary papers in whatever legal language (power of attorney). I will sign it right away and send it to you. I think the business and building etc., should go to his brothers, who have worked so hard for it. I am only interested in clearing debts here.”

18. Thus it clearly shows that the existence of the Will Ex. Pw1/1 had been disclosed by Shri Hassa Ram with the appellant and also her brother Shri Kamlesh and at that time they had never objected to the same and rather both of them had given clear indications that the business and property would go to the brother. Evidence in the shape of the testimony of PW4 and PW5 also discloses the fact that the appellants were aware of the will and thus the argument that the will surfaced after 12 years of the death of the testator does not hold ground.

19. I have heard both the parties and have gone through the observations of the Ld. ADJ. In my opinion, a perusal of the letter dated 9.7.1976 Ex. RW1/P1, which has been quoted above, clearly shows that the appellants were aware of the Will. This also indicated that they were not interested in the property. Thus, the ground taken by them that the Will is a forged document and has not been brought to their knowledge for 12 years from the death of the testator is false and frivolous. Another ground on which the appellants have objected were the difference in the signatures on the Will and on the passports of the deceased Ex PW2/RX1 and Ex PW/RX2 and credit cards etc. Even the finding of the Ld. ADJ fully accepts that the signatures vary but the Ld. ADJ has himself compared the signature in the Will with that of the letters signed by the testator EX. RW1/P11 and RW1/P12 and observed that:-

“19. I myself have examined the signatures on the Will Ex.PW1/1 with the admitted signatures on the passports Ex.PW2/RX1 and Ex.PW2/RX2 as also on the credit cards. Of course, the signatures on the passports and the credit cards are very well formed and the three words ‘Man Mohan Dewani’ have been separately written, whereas in the Will the three words have been joined. Apparently, there is difference between the two sets of signatures but at the same time when we go through the signatures of the testator on the letters Ex.RW1/P11 and Ex.RW1/P12 of the year 1976, which were admittedly written by the testator to the petitioner (these letters have also been admitted by the respondent no.5), it would be seen that the signatures have been made in continuation in the same style as on the Will Ex.PW1/1. The letters Ex.RW1/P11 and Ex.RW1/P12 being of May and June, 1976 are in close proximity to the execution of the Will dated 20.4.1975 and, therefore, it is not appropriate to reject the Will only on the basis of the signatures of the testator on the passports and the credit cards.”

20. I have perused the observations of the Ld. ADJ regarding the signatures and I feel that there is no infirmity therein. The Ld. ADJ has personally compared the signatures and has found similarity in the signatures made in the Will and the letters. I have also examined the signatures of the testator in the Will as well as in the document dated 4.1.1973, which is the letter requesting telephone connection on the medical grounds and found that the signatures on both these documents are similar. The authenticity of the letter has been admitted by counsel for the appellant under instructions as noted by me in the order dated 20.01.2011, which reads as under:-

“During the course of arguments, Sh. M. Wadhwani, Advocate appearing for the appellant admits that the letter dated 04.01.1973 as filed by the respondent along with documents which contains signatures of the deceased testator contains his genuine signatures and can, therefore, be used for the purpose of comparing the signatures of the deceased on the Will in question even though, the said document is not exhibited because it is filed by the respondent and has been admitted by the appellant. Further, the said document has been used by both the hand-writing expert.

Arguments heard.

Judgment reserved.

Parties are given liberty to file written synopsis within 7 days from today.”

21. It is a known fact that no two sets of signatures written by the same person can be identical and also person's signatures vary according to the importance of the documents. Further, since PW1 has already testified to the fact that the testator had put his signatures on the Will in his presence, this statement further supports the fact that the signatures on the Will is that of the testator.

22. In addition to the oral evidence which has come on record, there are additional factors which are in the nature of circumstantial evidence which supports the case of the respondent that late Man Mohan Dewani executed the will in question in favour of Paras Ram Dewani, the executor.

(i) Admittedly, Man Mohan Dewani was born on 7.11.1939. He had three brothers including Hassaram, who is no more, Govind Ram Dewani and the respondent herein. Govind Ram Dewani is also no more.

(ii) Manmohan Dewani had started a business under the name and style of Filmistan Photo Studio since 1960. Paras Ram Dewani was a Govt. employee but he used to devote time to the business after office hours.

(iii) In the year 1967 Man Mohan Dewani shifted to USA to pursue his business expansion plan. In India the business was looked after by Paras Ram Dewani and a power of attorney was executed by Man Mohan Dewani in favour of Paras Ram Dewani.

(iv) It is a matter of record that single storeyed building bearing No. 86-87 Model Basti, Delhi measuring about 150 sq. mtrs. in which the said business was carried on as tenant, was purchased by Man Mohan Dewani with his own funds vide Sale Deed, copy of which is Ex.PW6/3. At that time, there were 10 more tenants in that building and there was only a ground floor. Later on, two more stories were got created by Paras Ram Dewani and he also got evicted most of the tenants therefrom after the death of Man Mohan Dewani.

(v) In 1971 Man Mohan Dewani married Usha Dewani, appellant No.1, who is the cousin sister of Jyoti wife of Hassa

Ram Dewani, eldest brother of Man Mohan Dewani. Usha Dewani was a resident of USA having a green card. The deceased settled with her wife in USA.

(vi) Man Mohan Dewani became a heart patient and this fact had come to the notice of Usha Dewani in the year 1972 as can be inferred from her statement made as RW-1.

(vii) On 04.01.1973 Man Mohan Dewani applied for a telephone connection at his Delhi residence at 14, Model Basti, Delhi on medical grounds being a Myocardial infarction patient.

(viii) On 20.40.1975 Man Mohan Dewani came to India and executed a Will Ex.PW1/1.

(ix) Later on, Man Mohan Dewani died of heart attack in USA on 19.6.1976. His body was sent to Paras Ram Dewani at Delhi. Admittedly, neither appellant nor her brothers accompany the dead body nor they came thereafter for the cremation of the dead body. Man Mohan Dewani was cremated in Delhi on 25.6.1976.

(x) On 25.06.1976 itself Hassaram wrote a letter to appellant intimating her about the will Ex.PW1/1 and asking her if Man Mohan Dewani has left any other will that he may have executed in between. Although the receipt of that letter is admitted by the appellant in her reply dated 09.07.1976 Ex.RW1/P1 but the letter dated 25.06.1976 written by Hassaram to her has not produced on record probably to avoid reference of the Will in question.

(xi) However, her reply dated 09.07.1976 Ex.RW1/P1 points out the intention of the deceased testator inasmuch as, she replied that,

“I looked in Manus paper but could not find anything. Please do send me necessary papers in whatever language (Power of Attorney). I will sign it right away and send it to you. I think the business and building etc. should go to his brothers who have worked so hard for it. I am only interested in clearing debt here.”

(xii) Admittedly, after the death of Man Mohan Dewani, the appellant never came to India. She had not bothered to look after the business of the deceased or to meet her in-laws.

(xiii) Ex.RW1/P10 is the letter dated 12.07.1976 written by Kamlesh, elder brother of the appellant, to Hassa Ram in reply to Hassa Ram's letter dated 28.06.1976. In this letter, in fourth paragraph, he wrote that,

Usha believes that his business property and other asset in India should go to his brother and will sign the necessary papers to relinquish her claim if required. Her main concern after this great tragedy is to clear all the debts that have accumulated here.

(xiv) A letter dated 25.07.1976, Ex.RW1/1, is the letter written by Hassa Ram Dewani to the appellant, wherein he wrote that,

Parso (Paras Ram Dewani) is checking the legal implication and we shall be sending you the necessary papers soon as it is Parso will have to resign his job before assuring proprietary change of the business...."

(xv) It is not disputed that later Paras Ram Dewani resigned from the post of Draftsman Grade A. He was relieved of his duties w.e.f. 31.08.1976 as stated by PW-3, a clerk from the Ministry of Surface and Transport, Government of India. There is no cross-examination of this witness by the appellants.

(xvi) Paras Ram Dewani through his advocate also informed the Sales Tax Officer, Delhi that Man Mohan Dewani has died on 19.06.1976 and after his death he took over the business and its liabilities. It was also requested that the local and central sales tax numbers 33038 and 21460 respectively be amended accordingly.

(xvii) The factum of resignation of Paras Ram Dewani was against intimated to the appellant vide letter dated 23.09.1976 Ex.RW1/7.

(xviii) Vide letter dated 02.05.1977 Ex.PW6/7 Paras Ram Dewani informed the Assessor and Collector, S.P. Zone, MCD about the death of Man Mohan Dewani on 19.06.1976, leaving a will in his favour and requested him to transfer (mutate) the property No. 8396 plot NO. 86-87 Model Basti, Delhi in his favour.

(xix) Ex.PW5/1 is a copy of the receipt register (diary) of the MCD produced by the PW5. Entry at Serial No.3797 of this Draft

shows that Paras Ram Dewani applied for transfer of property No. 8395 Model Basi in his name.

(xx) PW-6 Hari Singh Kapoor has produced the annexures of the application, which comprised of

(a) The death certificate of Man Mohan Dewani, Ex.PW6/2.

(b) Copy of the sale deed of the house, Ex.PW6/3.

(c) Copy of the will, Ex.PW6/4.

23. The aforesaid facts further makes it clear that the appellant was fully aware of the existence, validity and the various terms of the Will Ex.PW1/1 and in accordance with its terms, the respondent Paras Ram Dewani resigned his Govt. job for carrying on the said business (Filmistan Photo Studio) and in connection therewith applied in 1976 itself for the mutation of the property bearing No.8396, Plot No. 86-87, Model Basti, Delhi in his name on the basis of the Will. Paras Ram Dewani has also discharge the income tax and sales tax liabilities of the said business in Delhi, which was amounting to Rs. 60,000/- approximately.

24. As far as the validity of the will is concerned the appellant's case is that the respondent was in possession of bank papers signed by Man Mohan Dewani and on those pages the will has been forged. However, no evidence has been led on this point by the appellant. The other objection is the signatures of Man Mohan Dewani and of Hassa Ram, one of the attesting witnesses of the will are forged. It is also pleaded that at the time of the execution of the will, the deceased was not in sound disposing mind. The objections appear to be contradictory.

25. The appellant has examined herself as RW1 and has produced Mr.R.P.singh, Handwriting expert, who has opined that the signatures of Man Mohan Dewani on the Will are not of the person who has signed the passports and some cards. It is also significant that the respondent did not examine any of the LRs of Hassa Ram, who are parties to the case. Jyoti, widow of Hassa Ram, the cousin sister of the appellant, was available but she was not examined to verify the signatures of Hassa Ram. In fact, the legal heirs of Hassa Ram who

were parties to the case did not object to the grant of the probate on the basis of the Will Ex.PW1/1.

26. On the other hand, Paras Ram Dewani respondent has examined Mr.V.D.Banati, PW-1, who is one of the attesting witnesses of the will, who is related to the Dewani family. His wife is the cousin sister of Man Mohan Dewani and his brother. Jyoti, wife of Hassa Ram, the other attesting witness to the will, is the cousin sister of the wife of Mr.V.D.Banati. They had good family relations. PW-1 has stated that he and Hassa Ram, both signed the Will Ex.PW1/1 in the presence of Man Mohan Dewani, who also signed the said will in their presence and all of them saw each other signing the will.

27. In his cross-examination, it was not suggested to the witness that the signatures of Man Mohan Dewani are forged. The suggestion put to witness about the signatures of Hassa Ram at Point B on the Will was denied by the witness. The further cross-examination of the witness relates to the alleged strained family relations of the witnesses and the appellant which were denied by the witness. Later part of his cross-examination would show that the learned Trial Court had to intervene and to hold that the counsel for the objector/appellant has started into a fishy enquiry regarding marriage of the witness and therefore, the counsel is asked that he should not put any such question pertaining to the marriage of the witness. Thereafter, the witness had denied the suggestions that he had no relation of any kind with the deceased Man Mohan Dewani. The witness also denied the suggestion that it was he who got the will in question fabricated in connivance with the respondent. It is, however, pertinent to mention that in her cross-examination the appellant has stated that Man Mohan Dewani has good and cordial relations with Mr.V.D.Banati and his wife.

28. Mr.V.D.Banati has proved the Will PW1/1 in accordance with Section 63(c) of the Indian Succession Act and no further proof is required.

29. The burden to prove that the will is forged and fabricated in on Usha, reference may be made to AIR 2005 SC 233 (para 10).

30. No attempt has been made by the appellant nor any evidence has been led to prove that the signatures of Hassa Ram on the Will Ex.PW1/1 are forged. Though RW-2 Mr.R.P.Singh, Handwriting expert was produced by the appellant, but the handwriting expert did not examine the signatures of Hassa Ram nor gave any opinion about those signatures. The appellant did not examine any other witness to say that the signatures of Hassa Ram were forged. The appellant has hence failed to discharge the burden to prove that the signatures of Hassa Ram are forged.

31. On the other hand, apart from PW1 Mr.V.D.Banati, respondent has entered in the witness box and has in unequivocal terms stated that the Will Ex.PW1/1 is signed by Man Mohan Dewani and attested by Hassa Ram as one of the attesting witness. He has identified the signatures of Man Mohan Dewani writing and signing several times in course of business correspondence. He has always identified the signatures of Hassa Ram, his real elder brother as he has seen him signing and writing several times. The only cross-examination directed is contained in the last three lines of the cross-examination concluded on 29.04.1997 and is to the following effect only:-

“It is incorrect to suggest that the said Will Ex.PW1/1 is false and it does not bear the signatures of the deceased and the signatures at Mark A are forged and so is the signatures of H.T.Dewani at Point B forged.”

32. Now coming to the statement made by the appellant that the signatures of Man Mohan Dewani which are in full and initials of Man Mohan Dewani on the correspondences made by him cannot be compared as full signatures and initials can never be compared. I may observe that on 29.05.1976 Man Mohan Dewani whose nick name was ‘Manu’ wrote a letter to Paras Ram Dewani who nick name is Paro which Ex.RW1/11. The manner in which he has written the word ‘Manu’, it is descending from left to right for the purposes of comparing his signature on the Will Ex.PW1/1. In this letter, Man Mohan Dewani advised Paras Ram to reduce the business loan as much as possible.

33. On 14.06.1976 Man Mohan Dewani has written another letter to Paras Ram Dewani which is Ex.PW1/P-12. In this letter also Man Mohan Dewani asked Paras Ram Dewani to reduce the business loans.

This letter is signed by Man Mohan Dewani as 'MANU'. In this letter also the word 'Manu' is written in a slanting descending manner from left to right which is similar to the signatures on the Will Ex.PA1/1. A perusal of the handwriting of the two letters Ex.RW1/P-II and RW1/P-12 would show that Manu was in the habit of writing in standee manner descending from left to right. The word 'Manu' is not an initial. It is a short name.

34. Now, coming to the arguments as to why the deceased would have executed the Will at the age of 35 years, it may be observed here that admittedly, the deceased was a known case of heart trouble since prior to 1972. He has suffered attacks in the past and was advised open heart surgery. There was no possibility of her coming to India as he is well-settled and has started business of Photo Studio in California also. In these circumstances, was not unnatural for him to execute a Will at an early age.

35. As regard filing of probate case in the year 1988 and not immediately after the death of Man Mohan Dewani, it is noted that the necessity for filing the probate case arose in 1988 when the respondent wanted to raise a loan on the basis of the property from the State Bank of Patiala, Model Basti for expanding the business and the Bank authorities advised to obtain the probate of the Will. The respondent has also led evidence that he had been taking steps for the purpose of mutation of property as well as for transfer of business, etc.

36. The submissions made by learned counsel for the appellant that they had no notice of any such action taken by the respondent is of no relevance because admittedly the appellant neither care to come to India along with the dead body of the deceased nor even otherwise interfered with the business left by the deceased. Rather her letter dated 09.07.1976 quoted above and the letter of her brother dated 12.01.1976 clarify their intention regarding succession of the business and the properties left by the deceased in favour of his brother. Thus, there being no requirement of having obtained the probate of will immediately after the death of the deceased and having applied for the same when necessity arises would justify the filing of the probate case at the time when it was filed. There is nothing on record that earlier to

the filing of the probate petition, there was not dispute between the parties which would give start of limitation earlier so as to bar the petition.

37. It is also pertinent to note here that the witness PW1 V.D Banati has testified to the genuineness of the Will and in unequivocal terms stated that the Will Ex. PW1/1 is signed by Man Mohan Dewani and attested by Hassa Ram as one of the attesting witness and thus, it stands proved that the Will is genuine. Also the various letters exchanged between the appellant and Hassa Ram clearly shows that the appellant was well aware of the existence of the Will.

38. Hence I do not find any infirmity in the order passed by the Ld. ADJ on 6.05.2004 in Probate Case No. 20/2001. The present appeal is accordingly dismissed with no orders as to costs. LCR be sent back forthwith along with a copy of this order.

CM No. 9777/2004 (stay)

Interim order, if any, stands vacated.

Application stands disposed of.

MOOL CHAND GARG, J

FEBRUARY 14, 2011

ps/dc