

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

Date of decision: 2nd January, 2012

+ **W.P.(C) No.9108/2011**

RAJESH KUMAR SHARMA & ANR. Petitioners

Through: None.

Versus

**ESTATE OF LATE SH. RAJ PAL
SHARMA & ANR**

.... Respondents

Through: Ms. Ferida Satarawala, Adv. with Ms.
Rachna Saxena, Adv. for R-2/State.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The petition seeks a declaration that Section 375 of the Indian Succession Act, 1925 is *ultra vires* the Constitution of India.
2. The factual matrix leading to the filing of the petition seeking the declaration aforesaid is as follows. The two petitioners claim to have applied under Section 228 of the Indian Succession Act, 1925 seeking Letters of Administration in respect of debts and securities left by their late father. The petitioners further claim that their father had executed Will dated 31.03.2005 bequeathing all his properties in favour of the petitioners. The said petition is stated to have been allowed vide order dated 24.08.2011 of the learned Additional District Judge. The said order records that though

the Will does not give details of the properties but the petitioners had in Annexures to their petition given details of the properties. Accordingly, grant of the Letters of Administration was made subject to the petitioners showing ownership of the testator in respect of the said properties and filing of Court fees on the valuation thereof. The petitioners were also directed to file Administration Bond along with one surety for an amount equal to the value of properties after filing of the valuation report as per law.

3. This writ petition states that the Estate of the father of the petitioners comprises *inter alia* of bank deposits of approximately ₹13/- crores and four immovable properties. The petitioners further state that they do not wish to obtain probate for the immovable properties and confine the Letters of Administration to the bank deposits of approximately ₹13/- crores. They further state that having been settled at London for the last several decades, they have no relatives or friends in India who can stand surety for them, as directed by the learned Additional District Judge.

4. Section 375 of the Indian Succession Act which requires such security to be furnished is impugned only on the ground that it is rigorous and is coming in the way of the petitioners from enjoying the money bequeathed to them and is thus *ultra vires* the Constitution of India.

5. The counsel for the petitioners has not appeared inspite of the matter having been passed over twice.

6. Section 375 (supra) is as under:-

“375. Requisition of security from grantee of certificate:-

(1) The District Judge shall in any case in which he proposes to proceed under sub-section (3) or sub-section (4) of Section

373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.

(2) The Judge may, on application may by petition and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder."

7. The provision for taking security bond with surety is intended to ensure safety of the debts received by the grantee of the Succession Certificate or Letters of Administration. The provision requires the grantee of Succession Certificate and / or Letters of Administration to furnish security, to protect the right of heirs *inter se* so that the person who is ultimately found to be entitled to the whole or part of the debts is indemnified. The grantee of a Succession Certificate or Letters of Administration is only authorized to collect the debts of the deceased and is obliged to distribute the same amongst the heirs, as per the Will probated or as per entitlement under the law of succession. The grantee of a Succession Certificate or the Letters of Administration is not necessarily the heirs or only heir whether under the Will or otherwise and not entitled to the debts and properties of the deceased collected on the strength of the grant. The law thus requires him under Section 375 supra to furnish security to ensure

that no loss is caused to the rightful heirs. The petitioners in the petition have been unable to plead as to how such provision protecting the interest of the heirs is bad.

8. We are therefore unable to agree that there is any illegality in the said provision and / or that the same is *ultra vires* the Constitution. The right to property under the Constitution is always subject to reasonable restrictions and we find the aforesaid provision to be a reasonable one.

9. We also find the petitioners to have filed this petition challenging the *vires* of the provision on the premise that surety, besides own security bond, is mandatorily required to be furnished. A bare perusal of Section 375 (supra) shows that the grantee of a Succession Certificate or a Letters of Administration can, besides a surety, furnish other sufficient security. The petitioners, who now claim to be interested in obtaining Letters of Administration only qua deposits in Banks and not qua immovable properties, can always apply to the learned Additional District Judge for variation of the order and offering to furnish security of the said immovable properties or any other security in substitution of the surety as directed by the learned Additional District Judge. The petitioners do not appear to have made any such application / prayer to the learned Additional District Judge. The direction contained in the order dated 24.08.2011 (supra) to furnish surety has been issued in routine manner without any hearing or pleading to the said effect.

10. Not only so, a bare perusal of Section 375 (supra) further shows that the furnishing of the security itself is in the discretion of the Court. It is always open to the grantee to seek exemption from furnishing of such security. We may record that this Court in ***Sudershan K. Chopra (Smt.) Vs.***

State 2006 IV AD (Delhi) 735 following the judgment of the Calcutta High Court in *Manmohini Dassi Vs. Taramoni* AIR 1929 Calcutta 733 and finding the grantee to be the sole legetee / beneficiary under the Will of all the properties bequeathed thereunder, directed furnishing of security bond of a nominal amount only. Similarly in *Asha Sikka Vs. State* 1996 3 AD (Delhi) 967 also this Court granted Letters of Administration without the grantee being required to execute any security. A similar view is found to have been taken by most of the other High Courts also.

11. We are thus constrained to observe that the challenge to the vires of Section 375 of the Indian Succession Act, 1925 predicated on the same being mandatory is misconceived and in ignorance of law.

12. This writ petition is accordingly dismissed. The petitioner shall however be entitled to approach the Additional District Judge with appropriate application for waiver of the condition of furnishing of surety and / or security and the said application if filed shall be dealt with in accordance with law.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 02, 2012

‘gsr’..