

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

+ **TEST. CAS. 84/2011**

Reserved on: 24.03.2015
Date of decision: 06.04.2015

IN THE MATTER OF:

RAJESH SINHA AND ORS

..... Petitioners

Through: Mr. Rajshekhar Rao, Advocate with
Ms. Gauri Puri, Advocate

versus

STATE

..... Respondent

Through: Ms. Zubeda Begum, Advocate with
Ms. Sana Ansari, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

**I.A. 2255/2015 (by the petitioners for exemption from
furnishing the surety)**

1. The present application has been filed by the petitioners praying *inter alia* that they be exempted from furnishing a surety in terms of the order dated 18.09.2013, whereunder letters of administration have been granted in favour of the petitioner No.1 in respect of the estate of their deceased father, late Shri Tarini Prasad Sinha.

2. The petitioners, who are siblings, had filed a petition under Section 278 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act'), praying *inter alia* that letters of administration be granted in respect of the estate of their father, late Shri Tarini Prasad Sinha. The said petition was uncontested and after the petitioners filed their evidence, the same was allowed. Vide order dated 18.09.2013, letters of administration in respect of the estate of the deceased were granted in favour of the petitioner No.1, subject to payment of the requisite court fee, valuation of the Gurgaon property and upon his furnishing an Administration Bond with one surety to the satisfaction of the Registrar General.

3. Counsel for the petitioners states that after the aforesaid order was passed, the valuation of the Gurgaon property owned by the deceased was received from the office of the District Collector, Gurgaon and his entire estate has been collectively valued at ₹6,37,60,383/-. Based on the aforesaid valuation, the petitioner No.1 has deposited the court fee stamps worth ₹25,50,427.32 paise in the Registry and he has also filed an Administration Bond under Section 291 of the Act on 3.4.2014. The present application has been filed by the petitioners praying that petitioner No.1 be exempted from

furnishing a surety for the estate of the deceased on the plea that a surety is required to be furnished to safeguard the ultimate interest of the heirs and in the instant case, all the three petitioners are the legal heirs and the beneficiaries of the estate of the deceased in respect whereof, letters of administration have been granted and further, no objection has been given by the petitioners No.2 and 3 for grant of the letters of administration in favour of the petitioner No.1, who has been authorized to administer the estate of the deceased. In the alternate, learned counsel for the petitioners submitted that a surety bond for a nominal amount may be permitted to be filed by the petitioner No.1. To seek exemption from furnishing a surety, learned counsel for the petitioners had referred to and relied upon the following decisions:-

- (i) Ramachandra Ramratan vs. Ramgopal Onnkarji and Ors. reported as **AIR 1957 MP 31**
- (ii) Sanjay Suri vs. State And Ors. reported as **2003 (71) DRJ 446**
- (iii) Sudershan K. Chopra vs. State and Ors. reported as **2006 87 DRJ 257**
- (iv) Ira Kapoor vs. State reported as **2011 SCC Online Delhi 2840**

4. The Indian Succession Act, 1925 is a self-contained Code insofar as the question of making an application for grant or refusal of probate, and for grant or refusal to grant letters of administration or an appeal against the decision of the probate court. The grant of probate by a court of competent jurisdiction is in the nature of proceedings in rem as long as the order of probate remains in force. It is conclusive as to the proper execution and validity of the will, unless it is duly revoked as per law. A probate order not only binds all the parties impleaded in the proceedings, it also binds other persons in all proceedings arising out of the will or connected therewith (Ref.: Chiranjilal Shrilal Goenka (Deceased) through LRs. vs. Jasjit Singh & Ors., (1993) 2 SCC 507). Similarly, in the case of intestate succession, the letters of administration granted in favour of the administrator is the court's imprimatur to him to administer the estate of the deceased by paying full expenses, duties, legacy, recover the dues to the estate and retain the residue of the estate. Once the residue has been determined, the administrator is under an obligation to pay the residuary legacy to the legatee(s) maintain true and correct accounts and an inventory of the assets of the deceased and thereafter, file the accounts in discharge of his duty.

5. Before considering the request of the petitioners for being exempted from furnishing a surety, it would be relevant to examine the provisions of Section 291 of the Act, which is reproduced hereinbelow for ready reference:-

"291. Administration-bond.-(1) Every person to whom any grant of letters of administration, other than a grant under section 241, is committed, shall give a bond to the District Judge with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge may, by general or special order, direct.

(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person-

(a) the exception made by sub-section (1) in respect of a grant under section 241 shall not operate.

(b) the District Judge may demand a like bond from any person to whom probate is granted."

6. Section 291 of the Act stipulates that but for exceptional circumstances as specified in the said provision, every person in whose favour letters of administration are granted, must furnish an Administration Bond. The objective of executing an Administration Bond is to secure due and proper administration of the estate of the

deceased and the executors and administrators are required to discharge the duties cast upon them in relation to the said estate and to ensure that after the estate has been administered, its residue is paid to the legatee or the next of kin.

7. The aforesaid aspect was examined in some depth by a Single Judge of this Court in the case of Sanjay Suri (Supra), where counsel for the petitioner had argued that the requirement of execution of a bond should not operate in the case of a sole beneficiary under a will to whom letters of administration are granted. After taking into consideration the requirement for execution of an Administration Bond as prescribed under the statute, the petitioner therein was exempted from furnishing the same in the light of the following observations:-

"21. The crux of the matter arising for consideration is whether a sole beneficiary under a Will, which has been duly proved, should be required to execute an administration bond for the administration of an estate, which is bequeathed to him and to which there are no other claimants. It is only on account of statutory bar under Section 222 of the Act, the said sole beneficiary and natural heir not being an executor, is not being granted the probate. It is not in dispute that had he been appointed the executor, there would have been no requirement or insistence on furnishing a surety or administration bond.

22. It would be seen that none of the duties of the Administrator as noticed in the preceding para-16

are required to be performed by a person, who is the sole beneficiary under the Will. It appears to me that the requirement of furnishing of administration bond or surety bond for administration of an estate belonging to oneself is wholly redundant and could not have been intended to be covered by the statutory provision, namely, Section 291 of the Act.

23. On a question of proper interpretation of Section 291 of the Act, reference is invited to the following paras from Halsbury's Laws of England:-

Paragraph 898 at page 551 of Volume 44 : "The construction of ancient statutes may be elucidated by what in the language of the Courts is called contemporanea expositio, that is, by saying how they were understood at the time when they were passed."

Paragraph 860 at page 524 of Volume 44 : "Where the main object and intention of a statute are clear, it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge on the part of a draftsman, unless such language is intractable."

24. Following are the well recognised principles of interpretation:-

Statutes must be so construed as to make them operative. If it is possible, the words of a statute must be construed so as to give them a sensible meaning. A statute must, if possible, be construed in the sense which makes it operative and does not defeat the manifest intentions of the legislature and nothing short of impossibility so to construe it should allow a court to declare a statute unworkable.

If the Court is to avoid a statutory result that flouts common sense and justice, it must do so not by disregarding the statute or overriding it, but by interpreting it in accordance with the judicially presumed

parliamentary concern for common sense and justice. But the possibility of injustice which leads the Court to adopt a particular construction must be a real one.

25. There are instances, where the entitlement though fully covered under the statute has been denied on ground of public policy. In R Vs National Insurance Commissioner, ex parte Connor reported in **(1981) 1 All ER page 770** was a case under the Social Security Act, 1975. A widow though entitled to the insurance as per condition of the statute for grant of social security was denied the allowance on public policy as she had created a status of widowhood by killing her husband. This is a case, where on ground of public policy the applicant fulfilling the entitlement under the statute was denied relief on grounds of public policy.

26. Reference at this stage may also be made to the Maxwell on interpretation of statutes with regard to the "golden rule". The learned author noticed as under:

"The So called 'golden rule' is really a modification of the literal rule".

27. It was stated in this way by Parke B:

"It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further".

28. Considering the nature of the Testamentary and Intestate succession, the object and purpose sought to be achieved by Section 291 and thus applying the aforesaid principles of interpretation of statutes, it would be seen that Section 291 of the Act is not intended to cover within its ambit the cases of a sole

beneficiary and legal heir under a Will being required to furnish administration/surety bond. One cannot administer the estate or his own estate against himself, for which he be required to give an indemnity or administration bond. Besides, none of the purposes and objectives of Section 291 of the Act are covered or fulfilled by the execution of an administration/surety bond by the sole inheritor or beneficiary under the Will duly proved. Such an exercise would be an exercise in futility. In the instant case if the petitioner's grand son was to mismanage or maladminister, he would be doing so only against his own and personal interests. A right that clearly vests in him by virtue of the bequest. Hence insistence of furnishing the administration bond in the present case would not only be meaningless and without any purpose, but inconsistent with succession. Section 291 in the light of the foregoing principles of interpretation, as noticed, has to be interpreted so as not being applicable to a case of a sole beneficiary and legal heir, under a duly proved Will insofar as requirement of furnishing an administration bond is concerned." (emphasis added)

8. In line with the aforesaid decision is the judgment in the case of Richa Pardesi (supra), where the petitioner had sought grant of letters of administration in respect of the estate of her deceased father. Being the sole legatee, the Court had exempted the petitioner from furnishing an Administration Bond by holding that any decision to give effect to Section 291 which prescribes that an Administration Bond be furnished by a sole beneficiary or a sole legatee, would lead to an absurd consequence, for the reason that such a beneficiary/legatee

would stand as a surety for the estate of the deceased, which has exclusively devolved upon him and it would be paradoxical to hold that a person can stand surety for himself.

9. On a conspectus of the above legal position on the requirement of furnishing a surety and Administration Bond, it may be noted that in a majority of decisions, it has been held that where a sole beneficiary/legatee is involved, the requirement of offering an indemnity bond/surety bond is dispensable for the simple reason that it would be an exercise in futility to call upon a sole beneficiary/legatee under a will that has been duly proved, to furnish an Administration Bond/Surety Bond when the estate of the deceased has been bequeathed in favour of the very same person. Even when it comes to cases where petitions are filed for grant of letters of administration under a will, on account of the bar imposed under Section 222 of the Act that stipulates that probate can be granted only to an executor appointed by the will, the courts have ordinarily adopted a liberal approach and have taken a pragmatic view by holding that judgments pronounced in exercise of testamentary and intestate succession are in the nature of proceedings *in rem* and the statutory provisions and rules are framed to realize the ultimate objective of succession.

10. Therefore, wherever probate has been sought of the bequest in favour of the natural heirs, and the petitioners have sought exemption from furnishing Administration Bonds/Surety Bonds they have ordinarily been exempted, reason being that a person, who is the sole beneficiary under a will, is not required to undertake duties of an administrator who in the said capacity, is expected to maintain true accounts and a complete inventory of the estate of the deceased and administer the said estate. The aforesaid line of thought has been expressed in the cases of Sanjay Suri (supra), Sudershan K. Chopra (supra) and Richa Pardeshi (supra).

11. The same view finds resonance in cases where there are more than one beneficiary/legatee of the estate of the deceased. While reiterating the principle that the objective of testamentary and intestate jurisdiction is to enable the Court to accord legitimacy and authenticity by giving its seal of approval to succession of the estate of the deceased, the courts have observed that the ultimate objective is of grant of succession and to realize the said objective, the statutory provisions and rules ought to be interpreted in a manner that are in furtherance to realizing the intention of the deceased, instead of obstructing it by getting hypertechnical. At the same time, the courts

have been cautious in cases of intestate succession for the reason that a greater degree of care is required to be taken when an administrator is to be appointed with a surety and security taken for due administration of the estate of the deceased.

12. In the present case, the petitioners are the natural heirs of the deceased, late Shri Tarini Prasad Sinha. Petitioners No.2 and 3 have issued letters of authorization in favour of the petitioner No.1 authorizing him to pursue the case on their behalf and they have no objection to the letters of administration being granted in favour of the petitioner No.1. The citations that have been issued in the press have not elicited any objections from any quarter. Being satisfied with the evidence produced by the petitioners, letters of administration were granted in favour of the petitioner No.1, vide order dated 18.9.2013. After the grant of the letters of administration, petitioner No.1 has already furnished the Administration Bond and deposited the court fee stamps and now he seeks exemption from filing the surety bond.

13. In view of the fact that letters of administration have been granted to the petitioner No.1 in the absence of any contest, this Court is of the opinion that the condition of filing a Security Bond for the entire value of the estate of the deceased, assessed at ₹6,37,60,383/-

would be extremely onerous on him. It is therefore deemed appropriate to allow the present application and permit the petitioner No.1 to furnish a Surety Bond for a sum of ₹10 lacs (rupees ten lacs) as this would serve the purpose without unnecessarily burdening him. Needful shall be done within two weeks.

14. The application is allowed and disposed of.

APRIL 06, 2015
rkb/sk

(HIMA KOHLI)
JUDGE