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

+ TEST.CAS. 48/2002, IA Nos. 16836/2010 & 23777/2015

Judgment decided on 2nd December, 2015

R.VENKATANARAYANAN

..... Petitioner

Through : Mr. Rajiv Bahl, Adv.

versus

GOVT. OF N.C.T.

..... Respondent

Through : Mr. Subash K. Pathak and Mr. Rohit
Agarwal, Advs. for respondent no. 2

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.(ORAL)

1. One Shri R. Venkatanarayanan had filed this petition under Section 276 of the Indian Succession Act, 1925, for grant of probate of the Will dated 31st January, 2002 of Late Dr. Pran Nath Behl (testator). Shri R. Venkatanarayanan is the named executor in the Will. Subsequently, he filed an application seeking permission to renounce the executorship of the Will. Respondent no. 2 Shri Sushil Behl (son of testator) also filed an application for his transposition as a petitioner. Both these applications were allowed vide order dated 18th March, 2005. Shri R. Venkatanarayanan was permitted

to renounce the executorship of the Will in question and Shri Sushil Behl was transposed as petitioner with liberty to continue to proceed with the petition.

2. Daughter of testator, namely, Smt. Vanita Sarin is the respondent no. 2; whereas respondent no. 1 is Government of N.C.T. of Delhi. Respondent no. 2 Smt. Vanita Sarin has filed an application bearing IA No. 23777/2015 praying therein that petition be allowed and probate of last Will and testament dated 31st January, 2002 executed by Late Dr. Pran Nath Behl (testator) be granted. Respondent no. 2 has admitted the Will. She has also identified the signatures of the testator. She has admitted the validity of the Will, in view of the settlement arrived at between her and the petitioner vide Memorandum of Understanding dated 21st October, 2015. However, the fact remains that there is no opposition, to the grant of probate of the Will of the testator in favour of the petitioner, by the respondent no. 2.

3. Citation was published in the newspapers “The Statesman” 3rd March, 2003 (Delhi edition) and “Aaj” (U.P. edition). Despite publication of citations, no public person has come forward to file objections thereby opposing the grant of probate of the Will.

4. Valuation report dated 4th June, 2004 has been submitted by the Sub Divisional Magistrate, Connaught Place, New Delhi, and is on record. As per this report, value of the property is ₹82,71,000/- (Rupees Eighty Two Lacs Seventy One Thousand Only).

5. Petitioner has stepped in the witness box as PW2 and has tendered his affidavit Ex. PW2/A in his examination-in-chief. He has not been cross-examined by the respondents though opportunity was granted to them to cross-examine him. He has proved death certificate of Late Dr. Pran Nath Behl as Ex. PW2/7. He has categorically deposed that he was adopted by the testator after seeking permission from the learned District Judge, Delhi. Certified copy of the order dated 16th May, 1979 of the learned District Judge, Delhi has been proved as Ex. PW2/1. Copy of the Adoption Deed dated 4th June, 1979 has been proved as Ex. PW2/2. Copy of the application under Section 9(4) of the Hindu Adoption and Maintenance Act, 1956 dated 12th January, 1979 has been proved as Ex. PW2/3. Copy of the statement of Mrs. Marjorie Behl (mother of the petitioner) has been exhibited as Ex. PW2/4. Copy of the public notice dated 2nd April, 2002 has been exhibited as Ex. PW2/5. Copy of the newspaper cutting of Indian Express has been exhibited as Ex. PW2/6. PW2 has deposed that he is conversant with the

writing and signatures of the testator. He has identified the signatures of testator on the Will dated 31st January, 2002. He has also identified the photograph of the testator as affixed on the Will.

6. Above all, one of the attesting witness to the Will Shri Gulshan Nagpal has been examined as PW1. He has tendered his affidavit in his examination-in-chief. His testimony has also remained unchallenged. He has categorically deposed that Will dated 31st January, 2002 was executed by Dr. Pran Nath Behl. He has identified the signatures of the testator at points 'A', 'A1', 'B', 'C', 'D', 'E' and 'F'. He has also identified the photograph of testator. He has categorically stated that Dr. Pran Nath Behl has signed the Will in his presence and in the presence of Dr. Subhro Bhattacharjee (other witness to the will). He has also identified his signatures as well as that of Dr. Subhro Bhattacharjee at points 'G' and 'H'. Will has been exhibited as Ex. PW1/1.

7. Section 63(c) of the Indian Succession Act, 1925 envisages that the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or

the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

8. Section 68 of the Indian Evidence Act, 1872 provides that if a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. Proviso to Section 68 further provides that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied. Meaning thereby, in case of the will, at least one of the attesting witnesses, if alive, has to be necessarily examined to prove the will.

9. In this case, statutory requirements of Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872 have been duly established and proved. Will has been signed by the testator in

the presence of two attesting witnesses. PW2 has categorically deposed that testator has signed the Will in his presence, inasmuch as he had appended his signature in the presence of the testator and the other witnesses. According to him, Will was signed by the testator in the presence of both the attesting witnesses. He has identified the signatures of the testator as well as that of other witness. Needless to add that he has also identified his own signatures on the Will. He has also deposed that testator was in sound disposing mind. Accordingly, I do not find any legal impediment in granting the Letters of Administration with a copy of the Will dated 31st January, 2002 annexed, to the petition.

10. Probate can be granted only to the Executor and if Executor renounces, Letters of Administration is to be granted to one of the legatee. Section 231 of the Indian Succession Act, 1925 provides that if an executor renounces or fails to accept an executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and Letters of Administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy. Section 232 of the Indian Succession Act, 1925 further provides that a universal or a residuary legatee may be admitted to prove the Will, and Letters of

Administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered if (a) the deceased has made a Will, but has not appointed an executor, or (b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or (c) the executor dies after having proved the Will, but before he has administered all the estate of the deceased,

11. For the foregoing reasons, petition is allowed and Letters of Administration, with the Will dated 31st January, 2002 of Late Dr. Pran Nath Behl annexed is granted to petitioner, subject to his paying requisite Court Fee and furnishing Administrative Bond to the satisfaction of the Registrar General.

12. Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

DECEMBER 02, 2015
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