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

+ TEST.CAS. 23/2015

GAUTAM SONI & ANR Petitioners
Through: Mr. Sanjiv Kakra, Advocate with
Ms. Vaishali Kakra and Mr. Irfan Ahmed,
Advocates with plaintiff No.1 in person.

versus

STATE & ORS Respondents
Through: Mr. Dinesh Garg, Advocate with
Ms. Rachna Agrawal, Advocate for R-2 with
R-2 and her husband, Mr. Rakesh Kumar in
person.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
% 24.08.2015

1. The present petition has been filed by two petitioners under Section 276 of the Indian Succession Act, 1925 for grant of probate in respect of a document stated to be the last will and testament dated 02.10.2010, executed by late Smt. Harsh Nanda.

2. Mr. Kakra, learned counsel for the petitioners states that the petitioners were family friends of late Smt. Harsh Nanda and they have filed the present petition as the executors of the subject will whereunder the deceased had made a bequest in respect of her immovable property bearing No.N-49, Panchshila Park, New Delhi.

3. Notice was issued on the present petition on 27.03.2015, whereafter appearance was entered by Mr.Garg, Advocate on behalf of the respondent No.2. Mr. Garg submits that the respondent No.2 is the sole class-I heir of the deceased, her father/husband of Smt. Harsh Nanda having predeceased his wife. He states that due to the frequent interference by Shri Rahul Kumar, husband of the respondent No.2 in the property, subject matter of the will, his client had to file a suit for declaration and injunction in this Court, registered as CS(OS)2930/2014. In the said proceedings, the parties were referred to mediation and a Settlement Agreement dated 06.01.2015 was executed between the respondent No.2, her husband, Mr. Rahul Kumar and the respondent No.3, minor son of the respondent No.2 and Shri Rahul Kumar, through his father and natural guardian.

4. In terms of the settlement arrived at between the parties, they had agreed that the respondent No.2 is the absolute owner of the suit premises and she would have the full right to get it mutated in her favour. It was further agreed that the respondent No.2 will get the suit property developed through a Developer/ Builder and have four floors constructed thereon, out of which, she would be free to deal with two floors and the remaining two floors would be dealt with by

the respondent No.3/minor upon his attaining majority. It is further agreed that if the minor son predeceases his mother, then she would be free to enjoy the remaining 50% of the property at her sole discretion. Based on the aforesaid Settlement Agreement, the suit was decreed vide order dated 10.02.2015. The copies of the Settlement Agreement dated 06.1.2015 and the order dated 10.2.2015 are handed over and taken on record.

5. Counsel for the respondent No.2 states that no further orders are required to be passed on the present petition in view of the settlement arrived at between the respondent No.2 and her husband, which will take care of the interests of the minor respondent No.3.

6. Mr. Kakra, learned counsel for the petitioners states on instructions that his clients do not have any interest in the suit property except for safeguarding the respondent No.3/minor's interest. He states that the respondent No.2 be called upon to retain a sum of Rs.6.50 crores from out of the sum of Rs.10.50 crores, which shall be received by her in terms of the Collaboration Agreement dated 10.03.2015, whereunder the builder/developer has agreed that it shall pay a sum of Rs.6.50 crores to the respondent No.2 at the time of execution of the sale deed in respect of its share in the suit premises.

It is suggested that the aforesaid amount may be deposited in this Court and be placed in a FDR so that the entire amount alongwith interest accrued thereon can be released in favour of the respondent No.3 upon his attaining majority.

7. Counsel for the respondent No.2 is agreeable to the aforesaid suggestion.

8. In view of the aforesaid submission, the respondent No.2 is directed to deposit a sum of Rs.6.50 crores in the Registry within two weeks from the date of receiving the said amount from the builder/developer. Upon receiving the said amount, a written intimation of the date of receipt shall be communicated to the counsel for the petitioners. Once the Registry receives the said amount, the same shall be placed in a FDR initially for a period of three years, to be renewed thereafter from time to time, till further orders.

9. As and when the respondent No.3 attains majority, he shall be entitled to approach the Court by filing an appropriate application for seeking release of the said amount alongwith the interest accrued thereon.

10. In acknowledgement and confirmation of the orders passed hereinabove, the respondent No. 2 and her husband shall affix their

signatures on the order-sheet.

11. The interim order dated 27.03.2015 is vacated. The petition is disposed of with liberty granted to the petitioners to approach the Court in the event the respondent No.2 defaults in depositing the amount as agreed upon and recorded hereinabove.

HIMA KOHLI, J

AUGUST 24, 2015

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