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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TEST.CAS. 91/2013

MALA BHAGAT BALI

..... Petitioner

Through: Mr. Rahul Gupta, Mr. Shekhar Gupta
and Mr. S. Tarbez, Advocates with Petitioner in
person.

versus

STATE & ANR.

..... Respondents

Through: Mr. D. L. Frey and Mr. Tarun Frey,
Advocates for R-2.

CORAM: JUSTICE S. MURALIDHAR

ORDER

22.08.2016

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I.A. No. 10151/2016 (for exemption)

1. Allowed, subject to all just exceptions.

IA No. 10152/2016 (for condonation of delay of 690 days in filing of the appeal)

2. This is an application seeking condonation of the delay of 690 days in filing the appeal against an order passed by the Joint Registrar ('JR') on 16th September 2014 declining to give any further opportunity to the Appellant/Respondent No.2 to file a reply and thereby closing the said right to file a reply.

3. The reasons given by the Applicant are as under:

“3. For some quite time now particularly after the demise of her father (who was also an Advocate), Appellant has been suffering from Post Traumatic Stress Disorder (PTSD). This is a psychiatric condition where the patient suffers from panic attacks specially while dealing with issues on which they are sensitive. In the case of Appellant it is issues of close family members. While the Appellant who is also visually handicapped is at ease handling her clients' matters she gets severe panic attacks while dealing with the instant case involving her younger sister and her late mother. Appellant was advised by a senior psychiatrist that anti-depressants and tranquilizers which are normally prescribed for such disorders do not help as they produce withdrawal symptoms which include rebound anxiety and panic attacks. Appellant's PTSD got worse after her demise of her mother (deceased) in October 2013. The Respondent was fully aware of the Appellant's condition and took full advantage of it.

4. Psychiatrists advise that situations that trigger panic attacks should be avoided at all cost. It is precisely for this reason that Appellant who drafted and finalized her objections (written statement) in the instant matter and had her supporting affidavit attested by the Delhi High Court Oath Commissioner on 07.07.2014 did not actually file the same. Strange as it may seem, the situation was akin to a surgeon preparing to perform a life saving surgery on his son but developing cold feet at the eleventh hour.

5. Attempts by Appellant to engage Counsel were not successful. Counsel who thought they would end up working gratis for a colleague encouraged her to deal with the matter in person; which she could not do.”

4. It is further stated in para 9 as under:

“9. It is submitted that the non-filing of the appeal and

the nonappearance of Appellant before the Ld. Joint Registrar were neither deliberate nor intentional but was on account of factors not within her control. The Appellant sincerely regrets her default and beseeches this Hon'ble Court on humanitarian grounds to condone the delay in filing the accompanying appeal for setting aside the impugned order dated 16.09.2014 of the Ld. Joint Registrar.”

5. It is pointed out by learned counsel for the non-Applicant/Petitioner that on 30th April 2014, Respondent No.2 herself appeared in this Court in these proceedings. She is in fact an Advocate practising in this Court. The Court then granted four weeks’ time to Respondent No.2 to file her reply and directed the matter to be listed on 16th September 2014 before the JR. On that day, however, Respondent No.2 did not appear and the following order was passed:

“Valuation report has been received from SDM.

Respondent no.2 has not filed any reply, despite opportunity being given. Respondent no.2 was served with the summons on the petition on 17.01.2014. Sufficient opportunity has been given to respondent no.2 for filing the reply. I am not inclined to grant any further opportunity, hence, the right of respondent no.2 to file reply stands closed.

Matter be placed before the Hon'ble Court for further directions on 16th December, 2014.”

6. On 7th July 2015, the non-Applicant/Petitioner tendered for recording of evidence herself as PW-1 as well as one of the attesting witnesses Mr. Puneet Raman (PW-2). The JR recorded that there was no cross-examination by the Respondents. It was noted: “Nil, opportunity given as none appeared

on behalf of the Respondents.” Thereafter the Petitioner filed an application for summoning an official from the office of the Sub-Registrar together with the records. That application was allowed by the JR on 15th July 2015 and the matter was adjourned to 21st July 2015 for the said witness to appear.

7. The proceedings recorded by the JR on 21st July 2015 reads as under:

“PW-3 is present. She has been examined, cross-examined and discharged. Diet money has been paid to PW-3 in the court today by Id. counsel for petitioner. Petitioner's evidence stands closed.

Matter be placed before the Hon'ble Court for further directions for 27th July, 2015, the date already fixed.”

8. It is seen that not only did Respondent No.2 appear before the JR on that day but in fact subjected the witness, who appeared as PW-3, viz., the Upper Divisional Clerk (‘UDC’) in the office of the Sub-Registrar-VII, INA, Vikas Sadan, New Delhi to a very detailed cross-examination as regards registration of the Will dated 4th January 2012 stated to have been executed by the mother of the Petitioner as well as Respondent No.2. It is not, therefore, possible for this Court to accept the plea of Respondent No.2 regarding her state of mind and her inability to pursue the case for the circumstances mentioned by her in the application.

9. Learned counsel for the Applicant/Respondent No.2 repeatedly stated that he was unable to produce any of the documents that might show the mental condition of the Applicant as that would have “consequences for her” obviously since she is a practising Advocate who continues to actively pursue the cases of her clients and appears not only in this Court but other

courts as well. It is not possible for this Court to take judicial notice of a state of mind of a person who claims to be suffering from a specific medical problem. That is a matter of special medical knowledge which certainly would be risky to take simply judicial notice of. Apart from the fact that there are no documents produced before the Court which can even reasonably support the averments in the application as regards the mental condition of the Applicant, her very conduct in this case and the fact that she was and is continuing to appear in other cases of her clients in the Court throughout the period in question makes it difficult for the Court to simply take judicial notice of what is being stated in the application.

10. The reasons for the Applicant not making any attempt at filing any application to not only recall the order dated 16th September 2014 but even the subsequent order dated 21st July 2015 wherein she is shown as having cross-examined PW-3 at great length fails to persuade the Court that she was unable to file an appeal challenging the order dated 16th September 2014 earlier. In other words, the Court is not satisfied that the delay of 690 days in filing this appeal is for *bona fide* reasons and for reasons beyond the control of the Petitioner.

11. The application is accordingly dismissed.

OA No. 161/2016

12. In view of the dismissal of IA No. 10152/2016, this OA is also dismissed.

TEST.CAS. 91/2013

13. This is a petition under Section 276 of the Indian Succession Act, 1925 ('ISA') seeking issuance of letters of administration in respect of the estate of late Mrs. Sharda Bhagat, the mother of the Petitioner as well as Respondent No.2 in terms of a Will dated 4th January 2012 executed by her. The Petitioner is the younger daughter and Respondent No.2 is the elder daughter. There is no other legal heir of the deceased testatrix with the husband of the testatrix and the father of Petitioner No.1 and Respondent No.2 having pre-deceased her on 16th February 1995.

14. According to the Will one-half of the property at 29 Babar Lane, Bengali Market, New Delhi of which the testatrix was the absolute owner is to go to the Petitioner.

15. The testatrix was 89 years old at the time of the execution of the Will. The Will has been registered in the office of the Sub-Registrar-VII, New Delhi.

16. In order to prove the Will, the Petitioner has examined herself as PW-1 and one of the two attesting witnesses, Mr. Puneet Raman as PW-2.

17. The requirement of attestation is spelt out in Section 63 (c) of the ISA which reads as under:

“63(c) 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.”

18. The manner of proving Will is provided in Section 68 read with Section 64 of the Indian Evidence Act, 1872 which read as under:

“64. Proof of documents by primary evidence.—Documents must be proved by primary evidence except in the cases hereinafter mentioned.”

“68. Proof of execution of document required by law to be attested.—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: Provided 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 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

19. The law in relation to proving a Will has been explained in some detail by the Supreme Court in *Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao* 2006 (13) SCC 433 and the relevant portion thereof reads as under:

“32. Section 63 of the Indian Succession Act lays down the mode and manner of execution of an unprivileged Will. Section 68 of the Indian Evidence Act postulates the mode and manner of proof of execution of document which is required by law to be attested. It in unequivocal terms states that execution of Will must be proved at

least by one attesting witness, if an attesting witness is alive subject to the process of the court and capable of giving evidence. A Will is to prove what is loosely called as primary evidence, except where proof is permitted by leading secondary evidence. Unlike other documents, proof of execution of any other document under the Act would not be sufficient as in terms of Section 68 of the Evidence Act, execution must be proved at least by one of the attesting witnesses. While making attestation, there must be an animus attestandi, on the part of the attesting witness, meaning thereby, he must intend to attest and extrinsic evidence on this point is receivable.

33. The burden of proof that the Will has been validly executed and is a genuine document is on the propounder. The propounder is also required to prove that the testator has signed the Will and that he had put his signature out of his own free will having a sound disposing of mind and understood the nature and effect thereof. If sufficient evidence in this behalf is brought on record, the onus of the propounder may be held to have been discharged. But, the onus would be on the applicant to remove the suspicion by leading sufficient and cogent evidence if there exists any. In the case of proof of Will, a signature of a testator alone would not prove the execution thereof, if his mind may appear to be very feeble and debilitated. However, if a defence of fraud, coercion or undue influence is raised, the burden would be on the caveator. [See *Madhukar D. Shende v. Tarabai Shedage* (2002) 2 SCC 85 and *Sridevi and Ors. v. Jayaraja Shetty and Ors.* (2005) 8 SCC 784]. Subject to above, proof of a Will does not ordinarily differ from that of proving any other document.”

20. In the present case, the Petitioner is required to prove that the testatrix signed the Will of her own free, having a sound disposition of mind and understood the nature and effect thereof. Where the genuineness of the Will

is assailed on the ground of fraud, coercion and undue influence, the burden of proof shifts to the challenger. It is trite that the mere grant of a probate of a Will does not amount to declaring the title of the person at whose instance the Will has been probated. All that the Court does is to certify the genuineness of the Will.

21. As far as the present case is concerned, the evidence of the Petitioner herself as PW-1 and of one of the attesting witnesses PW-2 to the effect that the testator signed the Will voluntarily and was in a sound disposition and understood the nature and effect of what has been stated has remained unchallenged with Respondent No.2 not choosing to participate in the proceedings when the said two witnesses tendered their evidence. Interestingly, the fact that the testatrix herself was present at the time of registration of the Will, was spoken to by PW-3 and was unable to be shaken. The deposition of PW-3 and her cross-examination by Respondent No.2 reads thus:

**“PW-3
Statement of Ms. Sonia Jain, UPC, Sub-Registrar-
VII, INA. Vikas Sadan, New Delhi.**

On SA

I have brought the summoned record i.e. the WILL dated 04.01.2012 executed by late Mrs. Sharda Bhagat@ Sharda Rani Bhagat W/o Late Sh. Som Raj Bhagat. The WILL was registered in the office of the Sub- Registrar-VII vide registration No. 2 in BookNo. 3 Vol. 535 on pages 1 to 9 on 04.01.2012. The certified true copy of the WILL issued from our office is already exhibited as Ex.PW1/1 alongwith the site plan. I have also brought the Peshi Register for the period 02.01.2012 upto

15.01.2012. The WILL Ex. PWI/1 is entered on page no. 18 of 121 at Serial No. 125. The copy of the same is taken on record. The relevant entry is encircled in Red at point A and is exhibited as **Ex.P"W3/I (OSR)**.

XXX by Respondent no.2.

I cannot tell where the WILL was registered, as I was not present in the office, but it must have been registered in the office of Sub-Registrar. I am not aware about the procedure of registration of the WILL, if the Sub-Registrar is summoned to the house. As per the records, there is no application for summoning the Registrar to the house for registration of the WILL. As per our records brought by me today's there is nothing to suggest that the Sub-Registrar was summoned to the house for registration of the WILL. T188 mentioned at point A on the WILL Ex.PWI/1 is the Token Number/Temporary Number and the registration number is 2. Only one WILL was registered on 04.01.2012. On 04.01.2012, the documents were registered from registration No. 122 to 210 in Book No. 1 and registration number of the WILL was 2 in Book No.3 and other documents were registered from registration no. 15 to 17 in Book No.4. The Temporary Number/Token Number is not entered in any registered as it is given for that day only. I am not aware if separate entries made for the documents whose registration is refused or the documents where party does not appear after getting the Token Number/Temporary Number. I am not aware if there is any special provision for registration for 90 year old lady in the office of Sub-Registrar. I cannot tell how the parties are called after they have been assigned a Token Number, as I am working only as Record Keeper. The application for summoning of the Sub-Registrar at home is not sent to the record room and the same remains with the Sub-Registrar. I cannot tell about the procedure adopted by the Sub-Registrar on receiving such application.”

22. From the answers given by PW-3 to the questions put to her in cross-examination by Respondent No.2, it does not appear to the Court that Respondent No.2 succeeded in showing that the testatrix either did not sign the Will voluntarily or was not in a sound frame of mind when she did so or that she was unable to understand the nature and effect of what was stated in the Will. In other words, nothing has been elicited by Respondent No.2 in the cross-examination of PW-3 which persuades the Court to conclude that any doubt has been created as to the genuineness of the Will.

23. It was pointed out by learned counsel for Respondent No.2 that there were three earlier Wills executed by the testatrix which fact was perhaps concealed by the Petitioner.

24. The Court does not find this submission to be correct. In para 11 of the petition it is pointed out thus:

“11. That the petitioner also very respectfully submits that after the death of testatrix on 22.10.2013, the petitioner has got records where from it is revealed to the petitioner that the testatrix, during her lifetime had also executed previous wills being dated 23.9.1997 and 29.11.2006. However in view of the last will and testament dated 4.1.2012, the previously executed wills dated 23.9.1997 and 29.11.2006 stand revoked and cancelled. Accordingly the present petition for grant of letters of administration is filed in respect of the last will and testament dated 4.1.2012.”

25. Therefore, it is not correct to state that the fact of three earlier Wills having been executed but having revoked was kept back by the Petitioner.

26. Mr. Rahul Gupta, learned counsel for the Petitioner points out that there is a separate suit filed by the Petitioner for a permanent injunction to restrain Respondent No.2 from interfering with the Petitioner's possession of the property in question. That suit CS (OS) No. 2181 of 2013 which was filed in this Court and has since been transferred to the Court of Additional District Judge at Patiala House Courts, New Delhi. It is pointed out that the original Will is in the possession of the Petitioner and one certified copy thereof is filed in those proceedings. Respondent No. 2 is appearing in and contesting the said suit. She is shown to have signed the said copy and endorsed it to the effect that she admits the document but not its contents. The Petitioner has obtained a certified copy of the said document as tendered in CS (OS) No. 2181 of 2013 and has placed it on record in these proceedings along with the list of documents filed on 3rd July 2015.

27. Mr. Gupta further pointed out that the original Will was shown to the JR at the time of marking of the certified copies thereof as exhibit in this Court. He adds that the Petitioner also has in her possession all the title documents to the property in question in original.

28. Mr. Gupta states out that since this is a petition filed by the sole beneficiary under the Will and not by its executor, the Court can grant letters of administration in favour of the Petitioner without requiring the Petitioner to furnish an administration bond or surety bond in terms of Section 291 of the ISA.

29. Indeed in *Sanjay Suri v. State* 107 (2003) DLT 626 this Court held as

under:

“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.”

30. The Court accordingly directs that letters of administration be issued in favour of the Petitioner qua the last Will dated 4th January 2012 executed by late Mrs. Sharda Bhagat, a certified copy of which has been placed on record and marked as Ex.PW-1/4.

31. The Petitioner is exempted from furnishing an administration bond and

surety bond in terms of Section 291 of the ISA as she is the sole beneficiary under the Will in question.

32. The Court accordingly allows the petition and directs the Registry to draw the decree sheet accordingly.

AUGUST 22, 2016
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S. MURALIDHAR, J

