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

+ TEST.CAS. 22/2013

NEERU MALHOTRA & ORS. Petitioners
Through Mr.Tarun Diwan, Advocate.

versus

STATE & OTHERS Respondents
Through: None

% Date of Decision: 09th August, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present petition has been filed by the petitioner under Section 276 of the Indian Succession Act for grant of letter of Administration in respect of Will dated 20th June, 2012 of the deceased Mr. Mehar Chand.

2. It has been averred in the petition that the petitioner No.1 is the daughter, petitioner No.2 is the son and petitioner no.3 is the grandson of the deceased Mr. Mehar Chand, who expired on 15th September, 2012. The deceased is stated to have executed a registered Will dated 20th June, 2012, which was duly attested by Mr. Raj Kumar and Mr. Ankit Dua. It has been further averred that Mr. Mehar Chand expired on 15th September, 2012 at New Delhi.

3. Notice was issued on the present petition on 19th March, 2013. Citation was also directed to be issued, which came to be published in the English edition of the daily newspaper “The Statesman”. Notices were duly served on the State and the other respondents.

4. The other Class-1 heirs of the deceased namely, respondent No.2-Muskan Kochhar, wife of the deceased son, respondents No.3 and 4 granddaughters of the deceased despite service, neither filed any objection nor any reply. Consequently, the learned Predecessor of this Court on 05th May, 2014 proceeded *ex parte* against the said respondents.

5. Thereafter, the respondents No. 2-4 preferred an appeal being FAO(OS)243/2016 against the order dated 11th July,2016 dismissing the application under Order IX rule 7 of the Code of Civil Procedure,1908 wherein the parties arrived at a settlement which had been duly recorded in the order dated 2nd May, 2017. The relevant portion of the said order is reproduced hereinbelow:-

“7. During the pendency of the present appeal, the matter was referred to Delhi High Court Mediation and Conciliation Centre.

8. Pursuant to the said reference, the parties have settled their disputes vide settlement agreement dated 11.4.2017.

9. Rs.12,50,000/- each have been paid by way of demand drafts in favour of minor(s) Namrita Kochar and Mehak Kochar respectively. The said amount is to be kept in Fixed Deposits till the minors attain majority and a copy of the Fixed Deposit receipt is to be produced before the High Court within 15 days. During the course of hearing, ld. Counsel appearing for Muskan Kochar submits that two

fixed deposits have been issued by Punjab National Bank for sum of Rs.12,50,000/- each in favour of Namrita Kochar and Mehak Kochar. The interest accrued on the Fixed Deposits is to be transferred into the account of Muskan Kochar, she being the mother and the natural guardian.

10. As per the settlement, the parties have accepted the Will dated 20.6.2012 stated to have been executed by Late Mehar Chand. It is obvious that the said Will had to be proved and established in Test. Case No. 22/2013 by leading evidence. Possession of the portion of property No. BQ-94, Shalimar Bagh, New Delhi in occupation of Muskan Kochar has been handed over to Neeru Malhotra and Sachin Kochar son of Vipin Kochar.

11. The settlement agreement also records that the 2nd party i.e. Neeru Malhotra and Sachin Kochar S/o Vipin Kochar will not make any claim or assert right in plot No.9, Block-C, Khasra No.1303, Swaroop Nagar near Nathupura Village, admeasuring 100 sq. yds.

12. Parties have also agreed to abide by the terms and conditions set out in the settlement agreement. It is also pointed out by the counsel for the parties that Muskan Kochar and minors Namrita Kochar and Mehak Kochar, have already inherited the estate left behind by Late Amit Kochar. To this extent, there is no dispute.

13. Keeping in view the aforesaid factual aspects, we are of the opinion that the settlement agreement takes care, is in the interest of, and is beneficial to the minors namely, Namrita Kochar and Mehak Kochar. The advocate for the appellant confirms and accepts the said position. The Court grants leave to enter into the said compromise.

14. The settlement agreement between the parties is taken on record and the present appeal is disposed of in terms thereof and the observations made.”

6. The respondent No.2 on her and on behalf of respondents No.3 and 4 (minor daughters) have filed a No Objection supported by an affidavit. The affidavit of respondent No.2 is reproduced hereinbelow:-

“I, Muskan Kochar widow of Late Shri Amit Kochar, w/o Mr. Pankaj Wadhwa R/o 428, Lal Jyoti Apartment, Sector 9, Rohini, New Delhi, do hereby solemnly affirm and state as under:

- 1. That I am respondent no.2, in the present case and my minor daughters namely i.e. Namrata Kochar & Mehak Kochar are respondent no.3 & 4 respectively. I am representing both the minors in the present case, being mother and natural guardian of the said minors.*
- 2. That I and my daughters have gone through the will dtd. 20.06.2012 of Late Shri Mehar Chand S/o Late Shri Girdhari Lal i.e. my ex-father-in-law and grandfather of my daughters i.e. respondent nos.3 & 4. We are satisfied with the execution of will and the contents thereof and we have no doubt of execution of the said will and authenticity of the same.*
- 3. That, I on behalf of myself and my minor daughters that is respondent nos. 3 & 4, have no objection to the grant of probate in respect of will dtd. 20.06.2012 executed by Late Shri Mehar Chand. We shall abide by the contents of the said will dtd. 20.06.2012.”*

7. The petitioner No.1 has adduced evidence by filing her own affidavit. The affidavit tendered by her in evidence is marked as Ex.PW2/A. It has been stated by the petitioner No.1 in her affidavit that the Testator was in a sound disposing mind at the time of executing the Will which was duly signed by him in the presence of

the witnesses. It is further stated that the Testator expired on 15th September, 2012 at Delhi leaving behind his last will and testament dated 20th June, 2012. The petitioner has proved the Death Certificate of the Testator as Ex.PW2/1.

8. Mr. Raj Kumar, one of the attesting witnesses, has filed his affidavit dated 30th May, 2014. In the said affidavit, he has deposed as under:-

“1. I say that I was known to Sh. Mehar chand for last more than 20 years before his death. On early morning of 20.6.2012, Sh. Mehar Chand requested me to accompany him to the Sub Registrar for execution and registration of this WILL regarding the properties owned by him.

2. I say that during our way to the office of sub Registrar, he produced the typed copy of his Will which was typed in Hindi and requested me to witness the said Will.

3. I say that I am one of the attesting witness to the WILL dated 20.6.2012, which bears my signatures as an attesting witness and the same was registered vide registration no.1021 in Book No.3, Vol.260 on pages 172 to 176 dated 27.6.2012, which is Exhibited as Ext.PW1/1.

4. I say that the deceased Late Sh. Mehar Chand had put his signature on the said WILL as testator in my presence as well as in presence of Shri Ankit Dua and at that time the deceased Late Sh.Mehar Chand was having full knowledge and understanding of the contents of his said WILL and admitted before me as well as before said Sh. Ankit Dua the correctness of the contents of the said WILL dated 20.6.2012 and it was his last Will and testament. The signatures of Sh. Mehar Chand are at point A1 to A-8, which I identify since the same were made in my presence.

5. *I say that after having identified his signature as testator on the said Will at point B1 & B2 dated 20.6.2012 said Sh. Mehar Chand on his asking I put my signatures on the said Will as an attesting witness and in the same manner Shri Ankit Dua the other attesting witness on asking of said Shri Mehar Chand also put his signatures on the said Will as the other attesting witness at point C and C-2. He further requested me to be the attesting witness to this Will.*

6. *I say that two left hand thumb impression of Sh. Mehar Chand were also obtained on a sheet of paper along with the signatures at Point A7 and point A8. Similarly my thumb impression as well as Mr. Ankit Dua along with our signatures were also obtained at point –B-2 and Point C-2 respectively.*

7. *I say that after putting the signatures on the said Will firstly by testator and then the attesting witnesses in presence of each other the same was presented to the Sub Registrar, who read over the contents of the said Will Exhibited PW-1/1 to Sh. Mehar Chand who after understanding the contents agreed for the registration of the said Will.*

8. *That my signature and signature of the other attesting witness namely Sh. Ankit Dua are at Point B and respectively Ex.PW1/1.”*

9. In view of the above, this Court is satisfied that the petitioner has succeeded in proving that the deceased Mr. Mehar Chand had executed the Will dated 20th June, 2012 and the said Will was his last Will and testament.

10. Consequently, the present petition is allowed. The letters of administration with original Will dated 20th June, 2012 annexed thereto is granted in favour of the petitioners, subject to their

furnishing the requisite Court fee in terms of the valuation report and submitting an administrative bond with one surety in accordance with law.

MANMOHAN, J

AUGUST 09, 2017

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