

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

+ **FAO No. 175/2017**

% **21st April, 2017**

INDRANIL CHAKRAVARTI & ANR. Appellants

Through: Mr. G.C. Yadav, Advocate.

versus

THE STATE NCT OF DELHI THROUGH OF SECRETARY

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 14994/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 14993/2017 (for delay)

This is an application seeking condonation of 334 days delay in filing the appeal.

For the reasons stated in the application the same is allowed and the delay in filing the appeal stands condoned.

C.M. stands disposed of.

FAO No. 175/2017

1. By this first appeal filed under Section 299 of the Indian Succession Act, 1925, appellants who were the petitioners in the succession certificate case, seek for setting aside of the impugned judgment dated 30.4.2016 which has dismissed the succession certificate case.

2. The impugned judgment dated 30.4.2016 is not too happily worded as it is not too clear whether the succession certificate case has been dismissed as no evidence had been filed to show relationship of the appellants/petitioners with the deceased, though the judgment indirectly says so at the end of para 8 of the impugned judgment, and that it is also noted that the succession certificate petition has been dismissed on account of valuation report not being filed.

3. At the oral request made on behalf of the appellant's counsel, this Court in exercise of powers under Order XLI Rule 27 CPC takes on record the letter dated 6.2.2014 issued by the Syndicate Bank to late Smt. Manju Chakravarti where one of the petitioner i.e. the petitioner no. 1/the son of Smt. Manju Chakravarti, has been shown as the co-owner of the locker of the bank. This document therefore

will establish that appellants/petitioners are the legal heirs, being the son and daughter of the deceased Smt. Manju Chakravarti.

4. I may also note that the succession certificate case was an uncontested case as the two petitioners were the only two children of late Smt. Manju Chakravarti and late Sh. Ashok Chakravarti and both of which parents have expired, and therefore the appellants/petitioners are the only legal heirs entitled to the succession certificate.

5. The appellants/petitioners have filed their affidavits and therefore there was no reason to disbelieve the affidavits that the appellants/petitioners were the only legal heirs and hence were entitled to the contents of the locker and the estate of the deceased late Smt. Manju Chakravarti.

6. The court below has erred in dismissing the succession certificate case on the ground that proper valuation report has not been filed, inasmuch as, at the stage of passing of the judgment in the succession certificate case it is the entitlement to the estate/movables which is held in favour of the appellants/petitioners, and only thereafter when a formal succession certificate is issued, the same will be issued on stamp papers which will be filed in terms of Entry 12 of Schedule I of the Court Fee Act, 1870. The Court therefore always can after

passing of the judgment get valuation done by an approved valuer and counsel for the appellants/petitioners agrees that the appellants/petitioners will get such valuation done of the estate, which comprises of movable assets only, and it will be done from an approved valuer. Obviously there are only movable properties of the deceased which are claimed because the case filed is a succession certificate case.

7. In view of the above discussion, the impugned judgment of the court below dated 30.4.2016 is set aside and the appellants/petitioners are granted the succession certificate subject to valuation of the estate/movables and paying of appropriate court fees. Appellants/petitioners will file a certificate of the approved valuer with respect to the items after getting the contents of the locker re-examined by the approved valuer and thereafter paying the necessary court fees as stated above and in accordance with law, and thereafter the court below will issue the succession certificate.

8. The appeal is accordingly allowed and disposed of.

APRIL 21, 2017

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VALMIKI J. MEHTA, J