* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision:7th September, 2017

\+ CM(M) 934/2017 & CM No.31221/2017 (for directions)

ATUL MAITHEL ..... **Petitioner**

Through: Mr. Sarvesh Bisaria and Mr. Prakash Chandra Sharma, Advs.

Versus

STATE BANK OF INDIA & ANR ..... **Respondents**

Through: Mr. Anil Kumar Sangal and Mr. Siddharth Sangal, Advs. for R-1.
Mr. Lovleen Goyal, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order [dated 14th February, 2017 in Succession Case No.6024/2016 of the Court of Administrative Civil Judge (South), Saket Courts, New Delhi] directing issuance of Succession Certificate to the petitioner on filing of court fees and an Indemnity Bond for the value of the debts and securities detailed in Schedule-A to the petition filed for obtaining Succession Certificate under Section 372 of the Indian Succession Act, 1925.

2. The counsel for the petitioner has been heard.

3. The counsels for the respondent no.1 State Bank of India and the respondent no.2 Axis Bank appear on advance notice.

4. The first argument urged by the counsel for the petitioner is that though the Succession Certificate has been ordered to be issued to the petitioner but the learned Administrative Civil Judge (South) has still required the petitioner to furnish Indemnity Bond and that too for an unlimited period. It is contended that once the Succession Certificate has been issued, there is no need for the petitioner to file an Indemnity Bond.

5. The aforesaid argument appears to be made on a misconception of law as to Succession Certificate. It has thus been enquired from the counsel for the petitioner as to what does he understand by Succession Certificate.

6. The counsel for the petitioner states that the petitioner, by the direction for issuance of Succession Certificate in his favour, has a right to the properties of the deceased mentioned in Schedule-A to the petition.

7. That is not the position in law. Sections 373 and 375 of the Indian Succession Act are as under:-

> *"**373. Procedure on application**.-(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing—*
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> *(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and*
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> *(b) to be posted on some conspicuous part of the court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit,*
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> *and upon the day fixed, or as soon thereafter as may be practicable, shall proceed to decide in a summary manner the right to the certificate.*
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> *(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.*
>
> *(3) If the Judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary*

proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants."

And

*"**375. Requisition of security from grantee of certificate.**-(1) The District Judge shall in any case in which he proposes to proceed under sub-section (3) or sub-section (4) of section 373, and may, in any other case, require, as a condition precedent to the granting of a certificate, that the person to whom he proposes to make the grant shall give to the Judge a bond with one or more surety or sureties, or other sufficient security, for rendering an account of debts and securities received by him and for indemnity of persons who may be entitled to the whole or any part of those debts and securities.*

(2) The Judge may, on application made by petition and on cause shown to his satisfaction, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise, as he thinks fit, assign the bond or other security to some proper person, and that person shall thereupon be entitled to sue thereon in his own name as if it had been originally given to him instead of to the Judge of the Court, and to recover, as trustee for all persons interested, such amount as may be recoverable thereunder."

8. What follows from the aforesaid provision is that when the Judge decides the right to the debts and securities with respect whereto Succession Certificate is claimed to belong to the applicant, the Judge can make an order for the grant of certificate to the applicant under Section 373(2) and in such a case Section 375(1) does not require the grantee to furnish any bond with sureties. However, if the Judge cannot decide the right to the certificate without determining the questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, the Judge can under Section 373(3), nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title to the debts and securities with respect to which Succession Certificate is claimed. In such an eventuality, Section 375(1) requires a bond with sureties to be furnished.

9. There is nothing in the order granting Succession Certificate to indicate that the same is under Section 373(2) or that the applicant has been adjudged to be the sole claimant or sole heir of the debts and securities of the deceased with respect to which Succession Certificate was claimed and has been granted. The grant of Succession Certificate is thus under Section 373(3) supra finding the petitioner to be only *prima facie* having best title to the said debts and securities. Grant of such a Succession Certificate entitles the grantee thereof only to collect the debts and securities of the deceased in the hands of others and imposes an obligation on the grantee to thereafter distribute the same amongst the heirs at law of the deceased. Since the grantee is being authorized to collect the debts and securities and it has not been finally determined that he alone is the heir of the deceased, Section 375(1) prescribes the grant of Succession Certificate to be made subject to furnishing of Indemnity Bond, to ensure that the grantee, on receiving the

debts and securities of the deceased, distributes them amongst the heirs at law of the deceased.

10. As far as the contention that the Indemnity Bond is for an unlimited period of time is concerned, once the petitioner files an affidavit before the Court of having so distributed the debts and securities collected amongst the legal heirs and the Court is satisfied in this respect, the petitioner would be entitled to apply for discharge of the Indemnity Bond. It is for this reason only, that an obligation in law is placed on the grantee to, from time to time, file accounts of the debts and securities collected and disposal thereof.

11. The other grievance of the petitioner is that no direction has been given to the respondents bank to make the payment to the petitioner and no direction has been given to the respondent no.2 Axis Bank to permit the petitioner to operate the locker.

12. The Succession Certificate as per the impugned order dated 14th February, 2017 has not been issued with respect to the bank locker with the respondent no.2 Axis Bank. The bank locker is not a debt and security within the meaning of Section 370 of the Indian Succession Act. The question otherwise also is no longer *res integra* and reference can be made to (i) ***Sharda Chopra Vs. State Bank of India*** AIR 1997 MP 196; (ii) ***Venugopal Loya Vs. Vijay Lakshmi Bung*** 1990 SCC OnLine AP 43; (iii) ***Rama Chakravarty Vs. Manager, Punjab National Bank*** 1990 SCC OnLine Cal 257; and, (iv) ***State Bank of India Vs. Netai Ch. Porel*** AIR 1982 Cal 92.

13. This is a mistake often found to have been committed. Instead of applying for Letters of Administration under Section 278 of the Indian Succession Act, Succession Certificate, grant whereof is limited to debts and

securities only, is applied for and which results in such inconvenience to the litigants.

14. As far as the only other contention is concerned, the Court granting the Succession Certificate only issues the certificate to declare to the public at large, of the grantee thereof being entitled, under orders of the Court, to collect the debts and securities of the deceased and to give due discharge therefor. However, if any person holding such debts and securities refuses to return the same to the grantee or disputes debts and securities, the grantee will have to initiate appropriate proceedings for recovery thereof and the proceedings for grant of Succession Certificate are by no stretch of imagination, proceedings for recovery or for mandatory injunction.

15. As far back as in ***Bai Kasei Vs. Prabhu Keval*** MANU/MH/0047/1903 a Division Bench of the High Court of Bombay held that a Court to which an application for Succession Certificate is made is not required to find whether the debts alleged to be due to the estate of a deceased person are really due or not as a preliminary condition for the grant of Succession Certificate. It was held that the grant of Succession Certificate is intended for protection of debtors, but that only means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate or is compelled by the decree of the Court to pay it to that person, he is lawfully discharged; there is nothing which expressly or by implication requires the Court granting a certificate to hold an enquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition for the grant. It was reasoned that such an enquiry might make a proceeding for grant of Succession Certificate something in the nature of a roving commission, whereas the enquiry in the matter of such grant is intended to

be summary; all that a Court in the matter of grant of Succession Certificate has to do, is to ascertain the right of a person to a Certificate apart from the question of existence or non-existence of the debts in respect of which he applies.

16. The challenge in the petition is thus misconceived.

17. Dismissed.

18. The counsel for the respondent no.1 State Bank of India also points out that in the order granting Succession Certificate, there is no reference to any debts and securities of the deceased with the State Bank of India.

19. The counsel for the petitioner states that the debts and securities with the State Bank of India were learnt of subsequently.

20. The remedy of the petitioner is to have the Succession Certificate amended.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 07, 2017
Bs/pp..
(Corrected and released on 6th October, 2017).