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

\+ TEST.CAS. 44/2013 & I.A. 9806/2013

DR. SURENDRA NARAIN RAIZADA ..... Petitioner
Through: Mr. Manu Padalia, Advocate.

Versus

STATE & ORS. ..... Respondents
Through: None

% Date of Decision: 15th November, 2018

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 read with Section 228 of the Indian Succession Act for grant of probate in respect of registered Will dated 31st March, 1992 of deceased Mrs. Sudesh Madan.

2. It has been averred in the petition that the petitioner is a British citizen and the husband of the testatrix, late Mrs. Sudesh Madan, who expired on 08th February, 2011 at Romford, England. The testatrix is stated to have executed a Will dated 31st March, 1992, which was duly attested by Mr.Stuart P. Mallinson and Mr. Rajinder Kumar Jain in England. It is stated that the petitioner is the sole executor of the Will dated 31st March, 1992

executed by his wife late Mrs. Sudesh Madan.

3. It is stated that the testatrix Mrs. Sudesh Madan expired leaving behind no other legal heirs except the petitioner i.e. her husband, respondent no.2 i.e. her son and respondent no.3 i.e. her daughter.

4. Learned counsel for the petitioner states that the petitioner had filed an application for grant of probate in the United Kingdom and probate was granted in respect of the Will dated 31st March, 1992 to the petitioner by order dated 12th January, 2012 by the High Court of Justice, the District Probate Registry, at Leeds, United Kingdom. However, the said probate cannot have effect over the properties in India in view of Section 5 of the Indian Succession Act, 1925. An authenticated copy of the Will as per Section 228 of the Indian Succession Act, 1925 and the probate dated 12th January, 2012 have been enclosed with the petition.

5. Notice was issued in the present petition on 31st May, 2013. Citation was also directed to be issued, which came to be published in the daily newspaper "Hindustan Times". No objections have been received to the Will after publication of the citation. Notices were duly served on the State.

4. Valuation report has been filed by the State.

5. Respondent nos. 2 and 3, the son and daughter respectively of the petitioner, have filed their affidavits stating that if the present petition for grant of probate is allowed in favour of their father i.e. the petitioner herein, they have no Objection. The relevant portion of the affidavits are reproduced herein below:-

"Affidavit of Respondent No.2

1. That I am the respondent no.2 in the above said petition for probate of the Will dated 31.3.1992 executed by my mother Late

Sudesh Madan. I have read the petition and I do not wish to file any reply to the said petition.

2. That I have no objection if the present petition for grant of probate is allowed in favour of my father/petitioner Dr.Surendra Narain Raizada.

3. That I am deposing this affidavit on my own free will and without any coercion or undue influence.

<u>Affidavit of Respondent No.3</u>

1. That I am the respondent no.3 in the above said petition for probate of the Will dated 31.3.1992 executed by my mother Late Sudesh Madan. I have read the petition and I do not wish to file any reply to the said petition.

2. That I have no objection if the present petition for grant of probate is allowed in favour of my father/petitioner Dr.Surendra Narain Raizada.

3. That I am deposing this affidavit on my own free will and without any coercion or undue influence."

6. Learned counsel for the petitioner states that during the pendency of the present petition the petitioner filed two amendment applications for deletion of two properties from the list of immovable properties and the same was allowed by this Court vide orders dated 22nd November, 2017 and 04th September, 2018.

7. Learned counsel of the petitioner states that there is no legal impediment in grant of probate in favour of the petitioner in respect of the Will dated 31st March, 1992 executed by late Mrs. Sudesh Madan. He undertakes to pay ad-valorem Court-fees as may be determined in respect of the properties, which are the subject matter of the Will dated 31st March, 1992 and to administer the property of the late Mrs. Sudesh Madan as

described by her in the Will dated 31st March, 1992.

8. Mr. Surendra Narain Raizada, the petitioner has filed an affidavit by way of evidence dated 28th July, 2014 and the said affidavit has been marked as Ex.PW1/1. It has been stated by the petitioner (PW-1) that the testatrix was in sound state of mind and good health at the time of signing the Will which was duly executed by her in the presence of the witnesses. It is further stated that the testatrix expired on 08th February, 2011 at Romford, England leaving behind her last Will and testament dated 31st March, 1992. The petitioner has proved the Death Certificate of the testatrix as Ex.PW1/A, an authenticated copy of the Will dated 31st March, 1992 as EX.PW1/B and a true copy of the probate dated 12th January, 2012 as Ex.PW1/C.

9. Section 228 of the Indian Succession Act, 1925 empowers this Court to grant probate of an authenticated copy of a Will, when the original Will has been proved and deposited in a Court of competent jurisdiction outside the territory of India. Section 228 of the Indian Succession Act, 1925 reads as follows:-

> *"228. Administration, with copy annexed, of authenticated copy of Will proved abroad—When a Will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, and a properly authenticated copy of the Will is produced, Letters of Administration may be granted with a copy of such copy attached."*

10. A Coordinate Bench of this Court in ***Dharamvir Sharma Vs. State & Ors. 2008 SCC OnLine Del 205*** has held as under:-

> *"7. The object of Section 228 is to dispense with the need to produce the original Will owing to its deposit in some other Court. The order under this provision is not like Section 276;*

however, it is ancillary to a grant made by a competent Court. Before making an order on such application, the Court has to satisfy itself that the copy produced before it answers the description in Section 228."

11. In the present petition, the testatrix expired on 08th February, 2011 and the petitioner being the executor applied for grant of probate before the competent Court i.e. the High Court of Justice, the District Probate Registry at Leeds, United Kingdom that was granted on 12th January, 2012. A copy of the probate along with an authenticated copy of the Will dated 31st March, 1992 have been produced and marked as exhibits.

12. In view of the above, the Court accepts the authenticated copy of the Will dated 31st March, 1992 executed by the testatrix late Mrs. Sudesh Madan for which probate was granted on 12th January, 2012 by the High Court of Justice, the District Probate Registry at Leeds, United Kingdom. Furthermore, this Court is satisfied that the petitioner has succeeded in proving that late Mrs. Sudesh Madan had executed the Will dated 31st March, 1992 and the said Will was her last Will and testament.

13. Consequently, the present petition is allowed. The probate in respect of the Will dated 31st March, 1992 of late Mrs. Sudesh Madan is annexed thereto is granted in favour of the petitioner.

14. At this stage, learned counsel for the petitioner states that Section 291 of the Indian Succession Act, 1925 (hereinafter referred to as the 'Act') requires furnishing of the administration bond, the object whereof is to secure due and proper administration of the estate of the deceased in which the executors and the administrators have to discharge multifarious duties in respect of the estate. He contends that in the case of a sole beneficiary under

the Will, the requirement of furnishing the administration bond under Section 291 of the Act is not mandatory.

15. In fact, a Coordinate Bench of this Court in ***Sanjay Suri Vs. State and Others, 2003 (71) DRJ 446*** has held as under:-

> *"21. The crux of the matter arising for consideration is whether a sole beneficiary under a Will, which has been duly proved, should be required to execute an administration bond for the administration of an estate, which is bequeathed to him and to which there are no other claimants. It is only on account of statutory bar under Section 222 of the Act, the said sole beneficiary and natural heir not being an executor, is not being granted the probate. It is not in dispute that had he been appointed the executor, there would have been no requirement or insistence on furnishing a surety or administration bond.*
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> *22. It would be seen that none of the duties of the Administrator as noticed in the preceding para-16 are required to be performed by a person, who is the sole beneficiary under the Will. It appears to me that the requirement of furnishing of administration bond or surety bond for administration of an estate belonging to oneself is wholly redundant and could not have been intended to be covered by the statutory provision, namely, Section 291 of the Act."*

16. Keeping in view the aforesaid mandate of law and the fact that the petitioner is the sole beneficiary under the Will, the petitioner is granted exemption from executing an administration bond with sureties.

MANMOHAN, J

NOVEMBER 15, 2018
Js/mn