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

Date of decision :13th July, 2018

\+ **TEST.CAS. 64/2014**

ANIL BAHRI ..... Petitioner

Through: Mr. Anil Kher and Ms. Subiya Akbar Warsi, Advocates.

versus

STATE & OTHERS ..... Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been preferred under Section 276 of the Indian Succession Act seeking grant of probate in respect of Will dated 25th October, 2011 (Exhibit PW-1/2) of late Smt. Pushpa Rani Bahri.

2. Smt. Bahri had three children; Mr. Anil Bahri, Mrs. Kiran Tuli and Mrs. Neeta Arora. She passed away in the UK on 6th July, 2012.

3. Mrs. Bahri executed her last Will and testament on 25th October, 2011 which is a registered Will with the Sub-Registrar-V, New Delhi. Mrs. Bahri had both movable and immovable assets. As per the Will, she bequeathed all her assets to her son who is the Petitioner. He is also named as the executor of the Will.

4. The assets of Mrs. Bahri as per the Will are:

   (i) Residential house C-139, Greater Kailash-I, New Delhi-110048.

   (ii) Bank account with Bank of Baroda, Greater Kailash, New Delhi.

5. In the present petition, the two daughters have been impleaded as Respondent Nos. 2 & 3.

6. Notice was issued in this petition on 4th July, 2014 and the Chief Revenue Controlling Officer was directed to file the valuation report. Citation was also published in *The Statesman*. Both the sisters, Respondent Nos. 2 and 3 submitted their no objection certificates dated 5th February, 2014 and 1st September, 2014 respectively.

7. Thereafter, the Sub-Divisional Magistrate, (Hauz Khas), Revenue Department, GNCTD having office at M.B. Road, Saket, New Delhi was directed to file the valuation report vide order dated 23rd March, 2016.

8. The Petitioner appeared as PW-1 and filed his affidavit dated 26th May, 2016. In his affidavit, he exhibited the death certificate of Mrs. Bahri dated 9th July, 2012 issued by the West Middlesex Hospital, Isleworth, Hounslow, UK, as **Exhibit PW-1/1**. He also exhibited the copy of the Will as **Exhibit PW-1/2**.

9. Mr. Vinod Sablok, one of the attesting witnesses to the Will, appeared as PW-2. The statements of both the Petitioner and PW-2, the attesting witness to the Will were recorded on 2nd June, 2016.

10. The official from the Sub-Registrar-V office appeared as PW-3 and he confirmed that the Will that is produced before the court matches with their records. Thereafter, the SDM filed his valuation report and valued the total cost of the property at Rs.7,04,55,684/- vide valuation report dated 19th July, 2017. On 23rd February, 2018, the original Will was directed to be produced.

11. Today, Mr. Anil Kher, learned counsel appearing on behalf of the Petitioner submits that the original Will has been produced. The same is on record and has been perused by the Court. The copy matches with the

original Will. All the documents having been duly exhibited and the witnesses having confirmed their signatures on the same, the documents are taken to be proved. Both the sisters having given No Objection Certificates respectively and all the legal heirs of Mrs. Bahri having confirmed the contents of the Will, there is no impediment in grant of the probate.

12. Mr. Kher prays that since the probate is being granted in favour of the heir of Mrs. Bahri, exemption may be given from furnishing the administration bond and sureties. He relies upon a decision of this Court in ***Sanjeev Kumar Juneja & Ors. vs. State (2016) 234 DLT 1***.

13. As held in the said judgment ***Sanjeev Kumar Juneja (Supra)*** which followed ***Subhash Chopra and Anr. vs. State (1989) 39 DLT 297***, where the property is bequeathed to the natural heirs, the exemption can be granted. The relevant portion of the said judgment is set out below: -

> *"4. Heard. In the case of Shambhu P. Jaisinghani v. Kanayalal P. Jaisinghani, reported at 1995 (34) DRJ 704, the Court while relying upon a decision rendered in the case of Subhash Chopra, etc. v. State, Probate Case No.12/87, has held that it would not be necessary for the petitioner therein to furnish the administrative bond as the mother therein had bequeathed the property to her natural heirs. Relevant portion of the judgment reads as under:*
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> > *"8. The Will is executed by the mother in favour of the sons. As the mother has bequeathed the property to her natural heirs, it is not necessary to order the petitioner to give the administrative bond. This view is taken by this Court in the case of Probate Case No.12/87 titled as Subhash Chopra, etc. Vs. State, decided on*

26.7.1989."

5. Further in an another decision rendered in the case of Sanjay Suri v. State, reported at 2003 (71) DRJ 446, the Court has exempted the petitioner from furnishing the administrative bond. Relevant portion of the judgment reads as under:

> *"16. Section 291 of the Act, requires furnishing of an administration bond. The object of an administration bond is to secure due and proper administration of the estate of the deceased in which the executors and administrators have to discharge multifarious duties in respect of the estate. The administrator is to pay full expenses, duties, legacy, retain the residue of the estate, recover the due to the estate. Once the residue has been determined, the executor or administrator are to pay the residuary legacy in case there is a kin. The administrators or the executors are required to maintain true account and complete inventory of assets of the deceased and to administer the estate of the deceased and to file true and complete account of the administrator.*
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> ....
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> *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."

"6. In the present case, the testator dies leaving behind petitioners herein. No objection was filed in favour of petitioner no.1. Accordingly, having regard to the submissions made, taking into consideration the statement made by petitioners no.2 and 3 and in view of the law laid down in Shambhu P. Jaisinghani (supra) and Sanjay Suri (supra), present application is allowed. Petitioner no.1 is dispensed with from furnishing the surety bond. Application stands disposed of."

14. In the facts and circumstances narrated above, the Petitioner has proved his case. The attesting witness PW-2 has categorically stated that the Will bears the signature of Smt. Pushpa Rani Bahri on all pages. He also confirmed that he had signed the Will and the second witness had signed the Will in his presence and that there was no force or coercion in the execution of the Will. He also confirmed that all the executants and the other witnesses including himself, went to the office of Sub-Registrar-V for getting the will registered.

15. The Petitioner is entitled to grant of probate. The probate of Will dated 25^{th} October, 2011 is granted subject to the furnishing of the court fee in terms of the valuation report filed by the SDM, Hauz Khas, New Delhi. Exemption as prayed for from furnishing of sureties and administration bond is granted as per the judgment in ***Sanjeev Kumar Juneja (Supra)***.

16. The petition is accordingly disposed of in the above terms.

PRATHIBA M. SINGH, J.
Judge

JULY 13, 2018
Rekha