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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 743/2018 & CAV 607/2018, CM APPL. 26640-26641/2018
ANJU ANEJA Petitioner
Through: Mr. Rama Shankar, Adv.

versus

SUMIT ANEJA & ORS Respondent
Through: counsel for the R-1 & 2.
R-3 in person

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **09.07.2018**

The respondent no.3 is not represented by any counsel but she submits that she supports the averments made by the petitioner/her mother.

Learned counsel for the respondent nos. 1 & 3 is present on advance notice.

CM APPL. 26640/2018 (Exemption)

Exemption allowed, subject to just exceptions.

CM(M) 743/2018 & CAV 607/2018, CM APPL. 26641/2018

Vide the present petition, the petitioner assails the impugned order dated 06.06.2018 of the ASJ (Central) Pilot Court Delhi in PC No.4/17 on the application filed under Sections 192/269 of the Indian Succession Act, 1925 r/w Order 39 Rule 1 & 2 and Section 195 of the Indian Succession Act, 1925 r/w Order 41 Rule 1 r/w Section 151 of the CPC filed by the respondent nos. 2 & 3 in the said Probate

Petition, who are arrayed as respondent nos. 1 & 2 in the instant petition CM(M) 743/2018. Vide the said impugned order, it was observed by the learned trial Court to the effect that:

“47. In the present case, even it is not feasible to obtain the security from the parties in possession i.e. petitioner, and insufficiency thereof or non availability of any security would likely to expose the respondents/applicants to irrevocable loss. Shri Amit Kumar, Advocate, Chamber No.8, Lawyers’ Chamber Block-I, Delhi High Court, New Delhi and Chamber No.456, Lawyers’ Chamber Block (Civil Wing), Tis Hazari Courts, Delhi-54, Mobile No.9899911324 who happens to be present in the court in some other matter & gave his consent to be appointed and to act as Curator, is hereby appointed as Curator. Accordingly, following directions are issued:-

(1) Curator shall take complete account of all the movable and immovable properties as mentioned in Schedule-A annexed to this order, mainly in order to determine as to which are rent bearing properties and who are in possession of each and every property, in case of immovable properties. He shall visit the said properties after serving advance notices to the concerned parties and will take photographs of the same showing property numbers.

(2) Curator to determine as to whether properties in question are tenanted, if so particulars of the tenants, what rent they are paying and to whom. He shall prepare the site plan of the

said properties. He shall take all the relevant and necessary documents from the tenants.

(3) Curator to get the value of the Cars in question through government approved valuer as well as their make of the year.

(4) Curator shall be entitled for a remuneration of Rs.50,000/-, besides other miscellaneous expenses which he may incurred, and the same shall be borne by the applicants.

(5) Both the parties are directed to cooperate and assist the Curator as and whenever required.

48. Further, petitioner as well as respondent no.4 are restrained to create any third party interest or alienate any part of the movable as well as immovable properties as mentioned in Schedule-A annexed as well as to deal with the same in any manner till further orders.

49. In the meantime, notice be also issued to the Senior Manager of the concerned Banks with direction to appear along with duly certified copy of statement of accounts in question, as mentioned in Annexure-A, for the period of last one year till date.

50. Notice be also issued to the Sr. Manager of the concerned Bank with direction to appear along with status report in respect of Locker in question, regarding its ownership, contents, when lastly it was operated & going back upto last one year, subject to furnishing complete particulars by applicants along with PF.

51. However, it is made clear that the aforesaid terms and conditions are subject to modification depending upon change of situation and circumstances.”

Along with the petition is also CM APPL. 26641/2018, an application under Section 151 of the CPC filed by the petitioner seeking stay of the operation of the impugned order dated 06.06.2018.

It is essential to observe that vide the averments made in the petition as indicated vide para-1 thereof and as also stated in the application CM APPL. 26641/2018 vide the last para of the said application, the grievance of the petitioner apparently relates to a misfounded apprehension that vide the impugned order dated 06.06.2018 in PC No.04/2017, the learned trial Court has directed the Curator to take over the movable and immovable assets of the deceased qua whom the stated will dated 03.07.2012 stated to have been registered on 05.07.2012, the Probate Petition No.03/2017 has been filed allegedly irrespective of the fact that whether the same forms part of the probate or not.

As reflected hereinabove, as brought forth through the observations in Para-47 to 51 of the impugned order, there is not a whisper of any direction directing the Curator to take over any movable/immovable assets which form or do not form part of the probate proceedings and rather the directions that have been made by the learned trial Court are in relation to the aspect of the Curator making a complete “account” of all the movable and immovable properties as mentioned in Schedule-A annexed to the order in order dated 06.06.2018 in order to determine as to which are rent bearing properties and who are in possession of each and every property, in case of immovable properties to visit the said properties after serving advance notices to the concerned parties and to take photographs of the same showing property numbers to

determine as to whether properties in question are tenanted, if so particulars of the tenants, what rent they are paying and to whom, to prepare the site plan of the said properties and to take all the relevant and necessary documents from the tenants and to get the value of the Cars in question through government approved valuer as well as their make of the year with further directions to the petitioner and to the respondent no.4 arrayed to the said Probate Petition who is arrayed as respondent no.3 to the present petition as being restrained from creating any third party interest or alienate any part of the movable as well as immovable properties as mentioned in Schedule-A annexed and to deal with the same in any manner till further orders, qua which the undertaking to the effect that the petitioner would not alienate any of the properties as stated in Schedule-A to the probate case and would not create any third party interest till the pendency of the proceedings in the Probate Case No.04/2017 was already given on 05.04.2017 with directions in para-45 itself to the effect as observed vide the impugned order itself that in the event of the Will not being found validly executed and if the petitioner did not succeed, the estate of the deceased already exhausted by the petitioner during the pendency of the petition, the respondents/applicants would be left high and dry in that situation, which would defeat the object of the provisions of Section 192 & 269 of the Indian Succession Act and would result into miscarriage of justice.

Taking into account the observations in the impugned order which apparently bring forth that these are interlocutory in nature, the nature of which is also observed vide the observations of the Hon'ble Supreme

Court in ***Uma Devi Nambiar & Ors. Vs. T.C. Sidhan (Dead)*** (2004) 2 SCC 321 on which reliance has been placed on behalf of the petitioner with specific observations to para-19 to 21 of the said judgment, which also observes to the effect that the proceedings under Section 192, 193, 194 and 195 of the Indian Succession Act, 1925 fall within in the domain of Chapter-XIII of the said enactment and are proceedings essentially interlocutory in nature and necessarily summary depending upon the filing of an application for relief seeking the Court to determine who has a right to possession pending the final determination of the rights of the parties in a regular suit.

A submission has been made however on behalf of the petitioner that before any steps are taken in terms of Section 194 of the said enactment as observed by the Hon'ble Supreme Court made in ***Uma Devi Nambiar & Ors. Vs. T.C. Sidhan (Dead)*** (*supra*) the Court would be required to satisfy the existence of the strong ground of belief on the aspect of the person having no lawful title and the person applying being likely to be prejudiced if left to the ordinary remedy of a valid suit. It has also been observed vide para-24 of the said enactment to the effect that:-

“Discretion, in general, is the discernment of what is right and proper. It denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution; nice discernment, and judgment directed by circumspection; deliberate judgment; soundness of judgment; a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance, between equity and colorable glosses and pretences, and not to do according to the will and private affections of persons. When it is said that

something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion; according to law and not humour. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man, competent to the discharge of his office ought to confine himself (Per Lord Halsbury, L.C., in Sharp v. Wakefield, (1891) Appeal Cases 173). Also (See S.G. Jaisinghani v. Union of India and Ors. (AIR 1967 SC 1427).

25. The word "discretion" standing single and unsupported by circumstances signifies exercise of judgment, skill or wisdom as distinguished from folly, unthinking or haste; evidently therefore a discretion cannot be arbitrary but must be a result of judicial thinking. The word in itself implies vigilant circumspection and care; therefore where the legislature concedes discretion it also imposes a heavy responsibility.

"The discretion of a Judge is the law of tyrants; it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is often times caprice; in the worst it is every vice, folly, and passion to which human nature is liable," said (Lord Camden, L.C.J., in Hindson and Kersey (1680) 8 How, St. Tr.57.)

26. If a certain latitude or liberty accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him, it is judicial discretion. It limits and regulates the exercise of the discretion, and prevents it from being wholly absolute, capricious, or exempt from review.

27. Such discretion is usually given on matters of procedure or punishment, or costs of administration rather than with reference to vested substantive rights. The matters which should regulate the

exercise of discretion have been stated by eminent judges in somewhat different forms of words but with substantial identity. When a statute gives a judge a discretion, what is meant is a judicial discretion, regulated according to the known rules of law, and not the mere whim or caprice of the person to whom it is given on the assumption that he is discreet (Per Willes J. in Lee v Budge Railway Co., (1871) LR 6 CP 576, and in Morgan v. Morgan, 1869, LR 1 P & M 644)."

Significantly, it is essential to observe that as rightly contended on behalf of the respondent nos. 1 & 2 and as already observed herein, the apprehensions of the petitioner as brought forth through para-1 of the petition and the last para of CM APPL. 26641/2018, i.e. the application seeking a stay of the operation of the impugned order dated 06.06.2018 relate to the apprehension of delivery of possession of the properties in probate petition and also those that are sought to be beyond the averments made in the probate petition in view of the averments made in para-23 of the petition itself by the petitioner.

It is essential to observe that the verdict in ***Uma Devi Nambiar & Ors. Vs. T.C. Sidhan (Dead) (supra)*** relied on behalf of the petitioner is in the specific circumstances where the Curator was directed to hand over the possession of the properties in question and it was thus vide para-28 of the said verdict of the Hon'ble Supreme Court directed to the effect that the order of the High Court of Kerala refusing to interfere with the order of the District Judge concerned needed to be vacated as the Curator should have been directed to deliver possession only to the appellants whose rights to half share is indisputable and beyond controversy and significantly there are

no directions whatsoever in the impugned order for handing over of possession.

It is essential to observe that vide the impugned order itself it has been observed by the learned trial Court that the terms and conditions of the order dated 06.06.2018 are subject to modification depending upon change of situation and circumstances. It is apparent that there is no merit in the petition which is wholly premature as rightly contended on behalf of the respondent nos. 1 & 2.

The petition CM(M) 743/2018 and the application CM APPL. 26641/2018 are declined.

ANU MALHOTRA, J

JULY 09, 2018

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