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

+ TEST.CAS. 59/2016 & IA No.4378/2018 (u/S 151 CPC)

KABIR OBEROI

..... Petitioner

Through: Mr. Subhash Oberoi and Mr. Rohit Oberoi, Advs.

Versus

STATE AND ORS

..... Respondents

Through: Mr. Varun Bhandari, Adv. for R-2.
Mr. Munawwar Naseem and Ms. Sanjam Chawla, Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.05.2018

1. This petition under Sections 218, 278 read with Section 300 of the Indian Succession Act, 1925 seeks Letters of Administration with respect to the estate of late Brig. Man Singh Oberoi and his wife Harbans Kaur Oberoi.

2. The petition was filed, pleading (i) that Brig. Man Singh Oberoi died at United States of America (USA) on 28th October, 2014; (ii) that his wife Harbans Kaur Oberoi died at USA on 19th June, 2016; (iii) that the estate of the deceased comprises of Bank Account and Locker at State Bank of India (SBI), Part-II Branch, M-2, South Extension, New Delhi; (iv) that the petitioner and the respondent No.2 Sameer Oberoi are the sons of Harmohinder Singh Oberoi, deceased son of Brig. Man Singh Oberoi and Harbans Kaur Oberoi; respondent No.3 Satinder Oberoi is the son of Brig. Man Singh Oberoi and Harbans Kaur Oberoi; Brig. Man Singh Oberoi and

Harbans Kaur Oberoi had another son namely Harjinder Singh Oberoi who had also died leaving daughters namely Sheena Oberoi, Alexis Oberoi and Lindsey Oberoi impleaded as respondents No.4(a), (b) & (c); (v) that the petitioner, is entitled to 1/8th share in the estate of deceased Brig. Man Singh Oberoi and Harbans Kaur Oberoi; (vi) that a sum of Rs.4,34,98,069.54 paise stood in the Bank Account as on 25th June, 2015.

3. The petition was entertained and notice and citation thereof ordered to be issued. The counsels for respondents No.1 to 3 appear.

4. None appears for the respondents No.4(a) to (c) but the counsel for the respondent No.3 states that he has telephonic instruction from respondents No.4(a) to (c) to appear on their behalf also but has not received written authorisation as yet. Respondents no.4(a) to (c) on service by publication and failure to appear, have already been proceeded against *ex parte* on 4th April, 2018.

5. Vide order dated 4th April, 2018, a commission was issued for opening of the Locker/Safe Deposit No.94 in the name of Brig. Man Singh Oberoi and Harbans Kaur Oberoi with the SBI, South Extension Part-II, New Delhi and to report about the contents thereof. The Branch Manager of the said Bank was also directed to hand over to the Court Commissioner, upto date statement of the monies in Saving Account No.10732254552.

6. The counsel for the petitioner states that nothing was found in the Locker/Safe Deposit aforesaid and thus the estate of Brig. Man Singh Oberoi and Harbans Kaur Oberoi comprises only of the monies in the Bank Account aforesaid and which are reported by the Court Commissioner to be

in the sum of Rs.4,83,70,367.54 paise. The counsel for the petitioner states that Letters of Administration be accordingly issued to the petitioner.

7. The counsel for the respondent No.2 Sameer Oberoi has no objection.

8. The counsel for the respondent No.3 however objects. It is stated (a) that Brig. Man Singh Oberoi had executed a General Power of Attorney (GPA) in favour of the respondent No.3 Satinder Oberoi and copy of this has been filed by the respondent No.3 at page 5 of documents dated 24th April, 2017 and in which GPA, Brig. Man Singh Oberoi had also authorised the respondent No.3 Satinder Oberoi to distribute the monies realised from the sale price of property No.C-404, Defence Colony, New Delhi in the ratio as described therein; (b) that property No.404, Defence Colony, New Delhi has already been sold and though the monies of the share of petitioner and respondent No.2 have been paid but the monies of the share of deceased Brig. Man Singh Oberoi, respondent No.3 Satinder Oberoi and the respondents No.4(a) to (c) remained in the aforesaid account of Brig. Man Singh Oberoi and Harbans Kaur Oberoi; and, (c) that the petitioner is thus not the right or suitable person for grant of Letters of Administration, having already obtained his share of the money lying in the said Bank Account.

9. The counsel for the petitioner states that what the counsel for the respondent No.3 has argued does not form part of his reply to the petition and the respondent no.3 in the said reply has agreed to the grant of Letters of Administration to the petitioner.

10. The counsel for the respondent no.3 states that the admission to the grant of Letters of Administration to the petitioner is a typographical error.

11. The reply is supported by the affidavit of the respondent No.3 and is also signed by the counsel for the respondent No.3 and it is expected that

they have, before signing, read the same and the plea of typographical error orally taken today, cannot be accepted.

12. I have enquired from the counsel for the respondent No.3 Satinder Oberoi as to how the aforesaid dispute, if at all arises as to the share in the monies, can be adjudicated in these proceedings for Letters of Administration. It has been held in ***Sarla Gupta Vs. The State*** 2017 SCC OnLine Del 12689 that such disputes cannot be adjudicated in these proceedings. The remedy, if any of the respondent No.3 Satinder Oberoi, if controverts the shares of the aforesaid admitted legal heirs, as claimed by petitioner, is to file a suit for partition or other appropriate proceedings therefor and which has not been filed for the last nearly two years since when this petition is pending.

13. It has further been put to the counsel for the respondent No.3 Satinder Oberoi as to how the petitioner, being the only natural heir who has applied for Letters of Administration, can be denied the same, inasmuch as no other natural heir has come forward to seek Letters of Administration and the petitioner, who according to the counsel for the respondent No.3 Satinder Oberoi also has a share in the monies of the share of Brig. Man Singh Oberoi.

14. The only answer of the counsel for the respondent No.3 Satinder Oberoi is that since the respondent No.3 Satinder Oberoi as well as the respondents No.4(a) to (c) Sheena Oberoi, Alexis Oberoi and Lindsey Oberoi are all in USA, they have not been able to instruct him to take appropriate action.

15. The respondent No.3 and respondents No.4(a) to (c), in this manner, can neither be permitted to keep this proceeding pending in this Court nor be permitted to deprive the petitioner and the respondent No.2 from the monies of their share, whatsoever it may be.

16. As far as the plea of suitability of the petitioner for grant of Letters of Administration is concerned, I have informed the counsel for the respondent No.3, that the petitioner before being granted a Letters of Administration will have to pay the stamp duty as per the valuation aforesaid of the estate and will have to file administration bond with one surety for the value of the estate of the property and it is thus not as if monies in excess of the share of petitioner and respondent no.2, than admitted by the respondent No.3, if allocated by the petitioner to himself and respondent no.2, will be dissipated on the Letters of Administration being ordered to be granted today.

17. The counsel for respondent No.3 then states that the respondent No.3 is the nominee of deceased Brig. Man Singh Oberoi and Harbans Kaur Oberoi with respect to the Bank Account aforesaid.

18. However, the fact of the matter remains that the respondent No.3, inspite of being the nominee, has as nominee not withdrawn the monies and distributed the same.

19. The counsel for the respondent No.3 responds, that the operation of the Bank Account was frozen on communication to the Bank by the petitioner.

20. That also does not explain the inaction on the part of the respondent No.3 Satinder Oberoi.

21. Otherwise, it is not the case of the respondent No.3 Satinder Oberoi also that the deceased Brig. Man Singh Oberoi and Harbans Kaur Oberoi have left any natural heir other than the parties before this Court or that either of the deceased has left any Will.

22. Thus, in my opinion, there is no need to keep this petition pending or to direct the petitioner to lead evidence, in view of the aforesaid admitted facts.

23. Accordingly, the petition is allowed.

24. Subject to the petitioner depositing in this Court the requisite stamp duty and subject to the petitioner filing administration bond with one surety for the value of the estate, Letters of Administration of the estate of Brig. Man Singh Oberoi and Harbans Kaur Oberoi comprising of monies (informed to be in the sum of Rs.4,83,70,367.54 paise) in the Saving Bank Account No.10732254552, be issued to the petitioner.

25. The petition is disposed of.

A copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

MAY 18, 2018
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