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

+ **CM(M) 942/2018 & CM APPL. 33051/2018**

GYANO & ANR

..... Petitioner

Through Mr. Jayant Tripathi, Ms. Nayantara
Roy, Mr. Dinesh Dahiya, Advs.

versus

STATE & ORS

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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11.09.2018

Vide the present petition, the petitioner assails the impugned order dated 13.07.2018 of the learned ACJ/ARC (Central), Delhi in SC No. 32782/16, vide which a succession certificate had been directed to be drawn in terms of the directions as per para-27 of the impugned order, with it having been directed that a succession certificate be issued in favour of the petitioner of the said petition i.e. Smt. Jai Kaur and other respondents in the following ratio :-

“Petitioner Smt. Jai Kaur : Will receive 1/4th share in the debts and securities of the deceased Sh. Shish Ram.

Respondent Sh. Rajinder Singh : Will receive 1/4th share in the debts and securities of the deceased Sh. Shish Ram.

Respondent Sh. Sukhbir Singh : Will receive 1/4th share in the debts and securities of the deceased Sh. Shish Ram.

Remaining 14 th share will be distributed among LRs of Patashi Devi, as per Hindu Succession Act, subject to Will, if any, which might have been executed by Smt. Patashi Devi.

In terms of Ex. PW-1/1, Ex. PW-1/2, Ex. PW-3/1, Ex. PW-3/2, Ex. PW-4/1, Ex. PW-4/2 and Ex. PW-4/6, the total amount payable in respect of the debts and securities of the deceased Sh. Shish Ram is Rs.3,13,73,620.72p. Succession certificate be drawn on deposit of requisite proportionate court fee i.e. Rs.7,84,341/- and on furnishing an Indemnity Bond with one surety within 15 days.”

It has been submitted on behalf of the petitioner that there has been a serious error in adjudication.

Learned counsel for the petitioner however fairly accepts that there exists a provision for an appeal in terms of proviso of Sub Section 2 of Section 388 of the Indian Succession Act, 1925 which specifically provides to the effect : -

“388. Investiture of inferior Courts with jurisdiction of District Court for purposes of this Act.-

(2) Any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge, and the provisions of this Part relating to the District Judge shall apply to such an inferior Court as if it were a District Judge: Provided that an

appeal from any such order of an inferior Court as is mentioned in sub-section (1) of section 384 shall lie to the District Judge, and not to the High Court, and that the District Judge may, if he thinks fit, by his order on the appeal, make any such declaration and direction as that sub-section authorises the High Court to make by its order on an appeal from an order of a District Judge.

Apparently as the appeal against the impugned order would lie before the learned District and Sessions Judge, the learned counsel for the petitioner thus seeks permission to withdraw the present petition with liberty to seek redressal in accordance with law before the learned District and Sessions Judge concerned and it is submitted that such appeal may be barred by time and seeks liberty to seek redressal in terms of Section 14 of the Limitation Act, 1963.

The petition is thus dismissed as withdrawn with liberty granted as prayed both qua institution of the appeal before the learned District and Sessions Judge in terms of the proviso of Sub Section 2 of Section 388 of the Indian Succession Act, 1925 and also qua the prayer under Section 14 of the Limitation Act, 1963, which would be adjudicated by the Court concerned without being influenced of any observations made in this order.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

SEPTEMBER 11, 2018/MK