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

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+ **FAO(OS) 244/2019**

RENU JAIN & ORS

..... Appellants

Through: Mr. Himanshu Nailwal, Advocate.

versus

KAMLAWATI JAIN & ORS

..... Respondents

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **03.12.2019**

CM APPL. 52000/2019 (exemption)

1. Allowed, subject to all just exceptions.

CM APPLs. 52001-52002/2019 (delay in filing and re-filing)

2. For the reasons explained in the applications, the delay in filing and re-filing the appeal is condoned and the applications are allowed.

FAO(OS) 244/2019 & CM 51999/2019 (interim directions)

3. The short question raised by the learned counsel for the Appellants concerns the interpretation of Section 63(c) of the Indian Succession Act, 1925 ('ISA'). Relying on the judgment in *Ganesan (D) Through Lrs. v Kalanjiam 2019 (4) CGLJ 114*, he submits that the sole attesting witness (CW-3), who spoke before the learned Arbitrator, acknowledging attending the office of the Sub-Registrar, Kashmiri Gate, Delhi for attesting the Will of late Shri Harbans Lal, satisfies the requirement in Section 63 (c) of the

ISA of receiving “from the testator a personal acknowledgment of his signature or mark, or the signature of such other person”, inasmuch as he was present on the occasion when late Shri Harbans Lal signed the Will.

4. The relevant portion of testimony of CW-3 reads as under:

“On SA

(The witness has been shown the registered Will dated 14th of August, 1986 registered on 26.08.1986 brought from the office of the Sub-Registrar, Kashmere Gate, Delhi. The witness has taken considerable time in examining his signatures as well as the signatures of the testator of the said Will).

The signatures of this Will as a witness may or may not be mine. I am not in a position to identify the signatures of late Shri Harbans Lal on this Will. I had gone to the office of the Sub-Registrar, Kashmere Gate, Delhi for for a witness to the Will to be executed by Shri Harbans Lal. We had gone inside the office of the Sub-Registrar, where my signatures were obtained on a Will and I was sent out. The Will not was not read-over to me. One Sushil Kumar was also present at that time but I am not in a position to identify his signatures. The signatures of Sushil Kumar were not obtained in my present.

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Shri Harbans Lal had told me that he was making a Will in favour of his wife Smt. Kamla Vati Jain. I know that Smt. Kamla Vati Jain had no source of income in those days. It is true that late Shri Harbans Lal Jail was maintaining her. Shri Harbans Lal Jain, had told me that he was bequeathing his entire property in favour of his wife, so that he is in a position to maintain herself after his death.

XXX examination by Shri Satender Chahar, Advocate for the respondent no, 3.

It is true that right from the construction of the house at B.D, Estate Delhi, the respondent Mr. Ashok Jain is living there. Shri Harbans Lal Jain, had not signed the Will in the office of the Sub Registrar in my presence as Mr Sushil Kumar and myself were sent out after signing.”

5. The above deposition is unhelpful to the point being canvassed by learned counsel for the Appellants. Whereas in ***Ganesan (D) Through Lrs. v Kalanjiam*** (*supra*) “the signatures of the testator on the Will” was undisputed, here the witness is unable to identify the signatures of late Harbans Lal on the Will in question. With this essential requirement not being satisfied, and the witness not being categorical about whether Harbans Lal was in fact physically present or was seen by him signing the Will when he attended the office of the Sub-Registrar to append his signatures, the requirement of Section 63 (c) of the ISA cannot be said to be satisfied.

6. Consequently, the Court does not find that the learned Single Judge has committed any error in declining to interfere, under Section 34 of the Arbitration & Conciliation Act, 1996, with the impugned Award passed by the Arbitrator.

7. The appeal is accordingly, dismissed. The pending application is disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 03, 2019/rd