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

+ **FAO(OS) 53/2018 & CM APPL.12397/2018**

KAILASH KUMAR CHALIA Appellant

Through: Mr. S.K. Bhaduri, Adv. with
appellant in person.

versus

STATE & ORS Respondents

Through: Mr. T.S. Nanda, Adv. for R1.
Mr. Rakesh Kumar, Adv. with
respondent no.2 in person.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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20.02.2019

1. The challenge in this appeal is to the order dated 8th March, 2018 passed by the learned Single Judge in IA No. 1906/2018 in a Test. Case no. 69/2011, which was an application filed by the appellant for dispensing him from furnishing personal bond and surety bond. The learned Single Judge has rejected the said application.
2. Mr. S.K. Bhaduri, learned counsel appearing for the appellant states that appellant shall be bound by the statement made before the learned Single Judge that he shall file the administration bond. He also states that stamp duty / court fee to that extent as directed by the learned Single Judge

shall be deposited within 15 days.

3. Mr. Bhaduri has also relied upon the judgment of this court in ***Shambu P. Jaisinghani vs. Kanayalal P. Jaisinghani and Ors. 1995 (34) DRJ 704*** in support of his contention.

4. The learned Single Judge while rejecting the application has in Paras 2 and 3 stated as under:

“2. The counsel for the petitioner, on enquiry states that the parents of the petitioner, besides petitioner as their son, left another son impleaded as respondent No.2 in this petition and a daughter impleaded as respondent No. 3 in this petition; that the respondent No. 2 being the brother of the petitioner did not object to the grant of letters of administration to the petitioner; that the sister of the petitioner though objected but her objections have vide judgment dated 4th December, 2017 been dismissed; that under the Wills, the properties subject matter thereof have been bequeathed equally to the petitioner and the respondent No. 2.

3. It is not thus not as if the petitioner is the sole beneficiary under the Wills, of which administration has been granted to the petitioner. Admittedly, there is another beneficiary i.e. the brother of the petitioner. It has thus been asked from the counsel for the petitioner as to how the petitioner can be exempted from furnishing the administration bond and surety bond inasmuch as the petitioner will have to administer the estate at least qua his brother respondent No.2.”

5. During the course of arguments, respondent no.2 along with his counsel had appeared and had stated that the appellant and the respondent

have settled their *inter se* disputes and the respondent no.2 has no objection if the surety bond as directed be dispensed with. Accordingly, he has filed an affidavit to that extent in the post lunch session today in the court. In view of the affidavit, surety bond as directed by the learned Single Judge is dispensed with. The appellant shall file the administration bond and the necessary stamp duty / court fee within 15 days from today.

6. In view of the affidavit filed by the respondent no.2, the filing of the surety bond as directed by the learned Single judge is dispensed with.

7. The appeal is allowed to the aforesaid extent.

CM. No. 12397/2018 (for stay)

Dismissed as infructuous.

Dasti.

CHIEF JUSTICE, J

V. KAMESWAR RAO, J

FEBRUARY 20, 2019

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