2024:DHC:1052

$~35

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

% ***Date of decision: 05th February, 2024***

\+ **TEST.CAS. 36/2017**

MR. VISHAL BANGA ..... Petitioner

Through: Ms. Prachi Johri, Advocate.

versus

STATE (NCT OF DELHI) & ANR ..... Respondents

Through: Ms. Avni Singh, Advocate for R-1.
Mr. Krishna Mohan K. Menon & Mr. Gautam Dhamija, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT ***(oral)***

I.A. 18691/2023 *(u/S 151 of CPC, 1908 by R-2)*

1. By way of present application, the applicant/respondent No. 2 seeks direction for taking on record the valuation report of the State Bank of India, NRI Branch, Mumbai and for issuance of Letter of Administration/Probate in favour of respondent No. 2.

2. It is submitted on behalf of the applicant/respondent No. 2 that the present Testamentary Case was disposed of *vide* Order dated 06.08.2019. Thereafter, in terms of Order dated 04.08.2023, the valuation report in respect of various immovable properties was received on record and the Letter of Administration/Probate was directed to be issued after completion of necessary formalities.

3. The valuation report has been received from the State Bank of India, NRI Branch, Mumbai. The details of valuation report submitted by the State Bank of India, NRI Branch, Mumbai, pertaining to the account of Late Shri Harbans Singh Banga be taken on record. According to the Will dated 21.05.2015 the proceeds in this account devolved in favour of the applicant/respondent No. 2 and the Letter of Administration in respect of the same be granted.

4. Therefore, the prayer is made that the appropriate directions may be given for taking on record the valuation report and to issue a Letter of Administration/Probate in favour of the applicant/respondent No. 2.

5. **The present application has been contested on behalf of the non-applicant/petitioner** by way of his detailed Reply by submitting that the non-applicant/petitioner and respondent No.2 are the sons of Late Shri Harbans Singh Banga, who died on 18.04.2016 at Dharmsala, Himachal Pradesh.

6. The non-applicant/petitioner and the applicant/respondent No. 2 are the beneficiaries under the last Will and Testament dated 21.05.2015 of Late Shri Harbans Singh Banga.

7. The Probate Petition under Section 276 of the Indian Succession Act, 1925 was filed on behalf of the non-applicant/petitioner. The applicant/respondent No. 2 had accepted the Will dated 21.05.2015 as the last Testament and requested for grant of Probate jointly to the non-applicant/petitioner and the applicant/respondent No. 2.

8. The Probate has been granted in favour of the non-applicant/petitioner and the applicant/respondent No. 2, subject to payment of proper court fee *vide* Order dated 06.08.2019.

9. It is claimed that the applicant/respondent No. 2 is now clandestinely seeking to achieve what is beyond the scope of the Will dated 21.05.2015.

10. It is asserted that as per the Will dated 21.05.2015, the bequest of the NRE fixed deposits was conditional, subject to deposit being maintained for a period of ten years and Bank Guarantees to continue for a period of ten years.

11. It is submitted that it is within the knowledge of the applicant/respondent No. 2 but she has suppressed that the Bank Guarantees maintained against the NRE fixed deposits have been invoked in June, 2016 by CA Indosuez (Switzerland), Singapore Branch (formerly known as Credit Agricole (Suisse) SA, Singapore Branch). Since, the Bank Guarantee has been invoked within ten years, the conditions mandatory for the bequest of the NRE fixed deposits in favour of the applicant/respondent No. 2 have not been fulfilled. The NRE fixed deposits shall therefore, devolve not as bequeathed in terms of Will dated 21.05.2015 but as per the law of intestate succession and both the non-applicant/petitioner and the applicant/respondent No. 2 are entitled to 50% of the amount now lying in the account.

12. Therefore, the prayer is made that the present application may be dismissed and permission be granted for distribution of assets / proceeds of the Bank in accordance with the Will dated 21.05.2015 and law of succession.

13. **Submissions heard.**

14. It is not in dispute that Late Shri Harbans Singh Banga had executed his last Will and Testament dated 21.05.2015 in favour of the petitioner and respondent No. 2.

15. A no objection to the grant of Probate/Letter of Administration had been given on behalf of the applicant/respondent No. 2 and accordingly, the present Testamentary Petition was allowed *vide* Order dated 06.08.2019.

16. To now understand the controversy, it would be pertinent to reproduce the requisite clause of the Will dated 21.05.2015 which reads as under: -

> *"As regards the NRE Fixed deposits kept with SBI NRI Branch Mumbai in the name of Banga Harbans Singh, as mentioned at serial no. 5 under the heading Moveable Properties in the Details of properties as mentioned above, these deposits should be continued to be maintained for a period of not less than ten (10) years and the Bank Guarantee granted against these deposits is to continue for a period of not less than ten 10 years, Provided both Banks continue to Grant and extend the bank Guarantee facility.*
> ***On the basis of above condition being met/adhere to**, the said NRE Fixed deposits and NRE account should be given to Mr. Banga Vikas (holding passport no. YA4408600) who is resident of 194, 931/1 charoennakom road, soi 15/ A.Klongthonsai, Klongsan, Bangkok 10600 Thailand."*
>
> *(Emphasis added)*

17. It is not under challenge that some loans had been taken on behalf of Late Shri Harbans Singh Banga, father of the parties to the present petition and the Bank Guarantees had been furnished to secure the said loans in the Will. It was provided that these Bank Guarantees be kept alive for at least ten years and whatever is left and the above being adhered to, NRE fixed deposits and NRI account be given to the applicant/respondent No. 2.

18. There is no challenge that the loans against which the Bank Guarantees had been furnished got paid in July, 2016 and the Bank Guarantees were encashed in view of the liabilities of Late Shri Harbans

Singh Banga being cleared.

19. The entire object of keeping the Bank Guarantees alive was purely to meet any outstanding liabilities. The condition of ten years was imposed in an anticipation of the liabilities of Late Shri Harbans Singh Banga taking not less than ten years in getting satisfied. Looking at the intent of the Will, it is evident that the Bank Guarantees were kept alive only for meeting the outstanding liabilities of Late Shri Harbans Singh Banga.

20. Since the liabilities have got satisfied in the year 2016, the Bank Guarantees had been invoked. When the entire objective and purpose of keeping them alive had already been satisfied, there was no reason to keep the bank Account alive thereafter. The period of ten years was not a condition precedent to devolution of proceeds to respondent no.2 but was merely to ensure that the children of Late Shri Harbans Singh Banga were not burdened with the liabilities incurred by him during his lifetime.

21. The non-applicant/petitioner having derived the benefit under the Will dated 21.05.2015 to the extent of twelve immoveable properties bequeathed to him for which the respondent No.2 did not object, he is now trying to manipulate facts in order to deny the benefits so granted to applicant/respondent No. 2 under the Will dated 21.05.2015.

22. The language used in the Will dated 21.05.2015 is that *"these deposits should be continued to be maintained for a period of not less than ten years Provided both Banks continue to grant and extend the bank guarantee facility"*.

23. The period of ten years was subject to both the Banks continuing to grant and extend the Bank Guarantee facility. Once the loan itself has been paid and the requirement of keeping the Bank Guarantees has been satisfied

within the timeframe of ten years, there is no question of non-satisfaction of the condition of continuing the bank account for not less than ten years.

24. The respondent No. 2 is entitled to the bequest as made in his favour in respect of the State Bank of India, NRI Branch, Mumbai.

25. In view of the foregoing discussion, the present application is hereby allowed with direction to the applicant/respondent No. 2 for payment of the appropriate court fee.

26. The valuation of the Bank Accounts be done accordingly and the Letter of Administration/Probate issued *vide* Order dated 06.08.2019 be granted.

I.A. 15749/2023 *(u/S 151 of CPC, 1908 by petitioner)*

27. List for arguments on 28.03.2024.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 5, 2024
S.Sharma