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

Date of Decision: 28th February, 2020

\+ **CM(M) 265/2020 and CM APPL. 7880/2020**

ARVIND NANDA ..... Petitioner

Through: Mr. Ankur Mahindro, Mr. Ajay Shekhar and Mr. Ankush Satya, Advocates (M: 9891051888).

versus

STATE ..... Respondent

Through: Mr. Rishikesh Kr. ASC with Mr. Premsagar Pal, Advocate for State (M: 9643006230).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed by Mr. Arvind Nanda, who is the son of Late Mr. Krishan Lal Nanda and Late Ms. Uma Nanda who had passed away on 23rd February, 2014 and 17th October, 2016 respectively. The Petitioner is the only heir of his parents and has no siblings.

2. The Petitioner had filed a petition under Section 372 of the Indian Succession Act, 1925 *(hereinafter, "ISA")* seeking the grant of a succession certificate in his favour. In the said petition, the ld. Civil Judge, vide judgment dated 21st October, 2019, directed as under: -

> *"1. ...*
> *It is the case of the petitioner that his father Sh. K. L Nanda @ Krishan Lal Nand expired on 23.02.2014 and his mother Smt. Uma Nanda had expired on 17.10.2016 and he is the sole surviving legal heir of the deceased persons. Copy of Death Certificate of deceased Sh. K.L. Nanda @ Krishan Lal Nand is Ex.PW1/1 and Uma*

Nanda is Ex-PW1/2. It is prayed that succession certificate be issued in favour of petitioner and he may be allowed to receive the debts &. securities of the deceased persons and succession certificate regarding same be issued accordingly.

...

4. A report was called from the concerned SDM/Tehsildar. In pursuant to the directions of the court, Tehsildar Mehrauli filed his report dated 12.11.2018 to the effect that petitioner is the only survivor of the deceased persons.

...

9. In view of these facts and reasons, I find that there is no objection to the grant of succession certificate in favour of petitioner Arvind Nanda for receiving the amount of shares and mutual funds amounting to Rs. 1361918.80 and Rs.5,04,741,76/-, totalling Rs. 18,66,660.56, ***as per the details mentioned in Annexure A containing 2 pages (attached with this judgment****). Consequently, the present petition is allowed and succession certificate be issued to petitioner for receiving the aforesaid amount (upto date amount of said shares and mutual funds) on filing of requisite Court Fees of Rs.46,667/- only in terms of Article 12, Schedule I of the Court Fee Act 1870 as applicable to Delhi alongwith indemnity bond in the sum of Rs. 18,66,660.56/- with one surety in the like amount."*

3. Thereafter, the Petitioner filed an application by which the Petitioner submitted the Court fee and the indemnity bond but exemption was sought from furnishing the surety bond. By the impugned order dated 17th December, 2019, the Petitioner's prayer for exemption from furnishing the surety bond has been rejected by the Trial Court with the following observations: -

"I have perused the application, case file and heard the arguments.

The petitioner was directed to furnish indemnity bond and surety bond in view of the Section 375 of Indian Succession Act, 1925. The petitioner is resident of Delhi and is doing steel business. The ground taken by the petitioner to seek exemption from furnishing of surety is not a ground to exempt him from furnishing of surety. The petitioner can easily furnis the surety as directed vide judgment dated 21.10.2019 and as required by U/s 375 of the Indian Succession Act.

<u>In view of these facts & reasons, the application filed by the petitioner seeking exemption from furnishing of surety is dismissed. Petitioner is directed to furnish the surety as required vide judgment dated 21.10.2019.</u>

File be consigned to Record Room."

4. Ld. counsel for the Petitioner relies upon the judgment of this Court in ***Ravi Mohan Kaul v. State and Ors. [CM(M) 477/2018, decided on 18.12.2019]*** wherein, considering that the beneficiary was the natural heir of the deceased who was also stated to be in part possession of the property and the other legal heirs had filed affidavits and No Objection Certificates, exemption from furnishing the administrative-cum-surety bond was granted.

5. A perusal of the impugned order shows that the prayer for exemption has been rejected with the observation that just because the Petitioner is the sole beneficiary, the requirement of furnishing the surety bond cannot be done away with.

6. A perusal of Section 375 of the ISA clearly shows that the imposition of a condition of security/surety/indemnity bond is in order to indemnify person(s) or safeguard the interests of such persons who may be entitled to the whole or any part of the debt and security. A condition is imposed where the Court comes to the conclusion that it is necessary for any purpose,

including any debt to be satisfied, any other claimants, any dues to statutory authorities etc. However, the imposition of a condition is to be considered in the facts of each case. A condition cannot be mechanically insisted upon, especially in situations wherein the beneficiary is the sole beneficiary or in other suitable cases, if the beneficiary is a natural heir of the deceased and there are no objections by the other claimants.

7. In ***Rajesh Kumar Sharma and Ors v. Estate of Late Raj Pal Sharma and Ors [W.P.(C) 9108/2011, decided on 02.01.2012]*** a ld. Division Bench of this Court, while upholding the Constitutional validity of Section 375 of the ISA, has clearly observed that the requirement of furnishing of a security can be exempted depending on the facts of each case. The observations of the ld. Division Bench are as under: -

> *"10. Not only so, a bare perusal of Section 375 (supra) further shows that the furnishing of the security itself is in the discretion of the Court. It is always open to the grantee to seek exemption from furnishing of such security. We may record that this Court in Sudershan K. Chopra (Smt.) Vs. State 2006 IV AD (Delhi) 735 following the judgment of the Calcutta High Court in Manmohini Dassi Vs. Taramoni MANU/WB/0351/1929: AIR 1929 Calcutta 733 and finding the grantee to be the sole legetee beneficiary under the Will of all the properties bequeathed thereunder, directed furnishing of security bond of a nominal amount only. Similarly in Asha Sikka Vs. State 1996 3 AD (Delhi) 967 also this Court granted Letters of Administration without the grantee being required to execute any security. A similar view is found to have been taken by most of the other High Courts also.*
>
> *11. We are thus constrained to observe that the challenge to the vires of Section 375 of the Indian Succession Act, 1925 predicated on the same being*

mandatory is misconceived and in ignorance of law."

8. A similar view has been taken by a ld. Single Judge of this Court in ***Maninder Singh v. State and Anr. [Test Cas. No. 106/2014, decided on 22.04.2015]*** wherein a series of cases granting such an exemption have been referred to:

> *"8. There are a stream of cases, where having regard to the fact that the petitioners in testamentary cases where probate/letters of administration were sought in respect of the estate of the deceased, had been exempted from furnishing Surety Bond/Administration Bond on the ground that the will was in favour of the natural heirs and there was no contest to the request for grant of letters of administration/Probate. It was observed that where the petitioners/applicants were natural heirs/sole beneficiary of the deceased, any order directing the said petitioner(s) to stand as an administrator/surety of the estate of the deceased would amount to their/his standing surety for themselves/himself. Some of the decisions on the aforesaid lines are as follows:-*
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> *(i) Ramachandra Ramratan vs.Ramgopal Onnkarji and Ors. reported as AIR 1957 MP 31*
> *(ii) Shambu P. Jaisinghani vs. Kanayalal P. Jaisinghani and Ors. reported as 60(1995) DLT 1*
> *(iii) Shakuntala Taxali vs. State (Delhi Administration) and Ors. reported as 61 (1996) DLT 502*
> *(iv) Sanjay Suri vs. State And Ors. reported as 2003 (71) DRJ 446*
> *(v) Sudershan K. Chopra vs. State and Ors. reported as 2006 87 DRJ 257*
> *(vi) Ira Kapoor vs. State reported as 2011 SCC Online Delhi 2840*
> *9. In a recent decision in the case of Rajesh Sinha and Ors. vs. State in TEST CAS. 84/2011 decided on 06.04.2015, taking note of the judicial precedents on*

the above aspect, this Court had dispensed with the requirement of the petitioner therein furnishing the Administration and Surety Bond by observing as below:-

> *"9.* ***On a conspectus of the above legal position on the requirement of furnishing a surety and Administration Bond, it may be noted that in a majority of decisions, it has been held that where a sole beneficiary/legatee is involved, the requirement of offering an indemnity bond/surety bond is dispensable for the simple reason that it would be an exercise in futility to call upon a sole beneficiary/legatee under a will that has been duly proved, to furnish an Administration Bond/Surety Bond when the estate of the deceased has been bequeathed in favour of the very same person.*** *Even when it comes to cases where petitions are filed for grant of letters of administration under a will, on account of the bar imposed under Section 222 of the Act that stipulates that probate can be granted only to an executor appointed by the will, the courts have ordinarily adopted a liberal approach and have taken a pragmatic view by holding that judgments pronounced in exercise of testamentary and intestate succession are in the nature of proceedings in rem and the statutory provisions and rules are framed to realize the ultimate objective of succession.*
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> *10.* ***Therefore, wherever probate has been sought of the bequest in favour of the natural heirs, and the petitioners have sought exemption from furnishing Administration Bonds/Surety Bonds they have ordinarily been exempted, reason being that a person, who is the sole beneficiary under a will, is not required to undertake duties of an administrator who in the said capacity, is expected to maintain true accounts and a***

> ***complete inventory of the estate of the deceased and administer the said estate****. The aforesaid line of thought has been expressed in the cases of <u>Sanjay Suri (supra), Sudershan K. Chopra (supra) and Richa Pardeshi (supra).</u>*
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> *11. The same view finds resonance in cases where there are more than one beneficiary/legatee of the estate of the deceased. While reiterating the principle that the objective of testamentary and intestate jurisdiction is to enable the Court to accord legitimacy and authenticity by giving its seal of approval to succession of the estate of the deceased, the courts have observed that the ultimate objective is of grant of succession and to realize the said objective, the statutory provisions and rules ought to be interpreted in a manner that are in furtherance to realizing the intention of the deceased, instead of obstructing it by getting hypertechnical. At the same time, the courts have been cautious in cases of intestate succession for the reason that a greater degree of care is required to be taken when an administrator is to be appointed with a surety and security taken for due administration of the estate of the deceased." (emphasis added)*"

9. Recently, in the case of ***Ravi Mohan Kaul (supra)*** this Court had also considered the legal position and granted exemption from furnishing the administrative-cum-surety bond.

10. The settled case law, therefore, clearly lays down the following principles: -

(1) The imposition of a condition for furnishing an indemnity/security is at the discretion of the Court.

(2) Whenever the Court is of the opinion that a condition is required to be imposed due to any debts and the fact that there is a

possibility of other claimants raising claims, the condition may be imposed.

(3) In every case involving the grant of a succession certificate, a mechanical approach of imposing a condition for furnishing the surety/security and insisting on the indemnity bond is not required.

(4) When an exemption from filing any surety is sought, the Court has to consider the entire conspectus and exercise its discretion depending on the facts of each case, in accordance with law.

(5) As held by the ld. Division Bench of this Court in ***Rajesh Kumar Sharma (supra)***, the imposition of a condition is not mandatory.

11. In view of the above legal position, the Petitioner, being the sole legal heir and beneficiary of his parent's estate, and there being no objections from any quarter, is exempted from furnishing a surety. The succession certificate is directed to be issued expeditiously and, in any case, within a period of eight weeks from today.

12. With these observations, the petition and all pending applications are disposed of. *Dasti*.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 28, 2020
MR/T

(Corrected & released on 5th March, 2020)