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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th February, 2021

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W.P.(C) 1402/2021

DR. SANJAY KHANDUJA

..... Petitioner

Through

Mr.Samar Singh Kachwaha,
Advocate

versus

PUNJAB NATIONAL BANK & ANR.

..... Respondents

Through

Mr. Santosh Kumar Rout &
Mr. Vijayendra Misra, Advocates
for Respondent/PNB, Kalkaji
(M: 9990392878)
Mr. Hashmat Nabi and Farah Naaz,
Advocates for Respondent/PNB,
Panipat Branch (M: 9810017822)
Mr. Himanshu Shekhar,
Mr. Jamnesh Kumar &
Ms. Swarnima Mishra/Law Officer
of CBI (M: 9310116418 &
9910739382)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).

CM APPL 3988/2021 (Exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

WP(C) No. 1402/2021

3. The present petition has been filed by Dr. Sanjay Khanduja, who was appointed as the Independent Administrator of the estate of one Late Dr. Rakesh Kumar Dhingra, also known as Dr. R.K. Dhingra, who was a resident of Harris County, Texas, USA. Late Dr. Dhingra passed away on

29th January, 2010. He had executed a Will, dated 22nd September, 1981, by which he appointed his mother as the Independent Administrator of his estate. However, since his mother pre-deceased the testator, the Probate Court of Harris County, Texas (*hereinafter referred as 'Probate Court, Texas'*), vide its order dated 15th June, 2010, appointed the Petitioner - Dr. Sanjay Khanduja as the Independent Administrator of the deceased's Will and estate. The operative portion of the said order reads as under:

"On this day came on to be heard the Amended Application For Probate of Will and Issuance of Letters of Independent Administration with the will annexed filed by Balbir K. Dhingra ("Applicant") in the Estate of Dr.R.K.Dhingra (Rakesh K. Dhingra), Deceased ("Decedent").

The Court, having heard the evidence and having reviewed the Will and the other documents filed herein, finds that the allegations contained in the Amended Application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of Decedent's death; that this Court has jurisdiction and venue of the Decedent's estate; that Decedent left a signed Will dated September 22, 1981, executed with the formalities and solemnities and under the circumstances required by law to make it a valid Will; that on such date Decedent had attained the age of 18 years and was of sound mind; that such Will was not revoked by Decedent; that no objection to or contest of the probate of such Will has been filed; that all of the necessary proof required for the probate of such will has been made; that such Will is entitled to probate; that in the Will, Decedent named Ram Devi Dhingra as Independent Executrix and Neroo Raj as Substitute Independent Executrix, to serve without bond, both of whom predeceased Decedent; that Applicant, the sole devisee under the Will, has designated Dr. Sanjay

Khanduja to act as Independent Administrator with the will annexed; that Dr. Sanjay Khanduja is duly qualified and not disqualified by law to act as such and to receive Letters of Independent Administration with will annexed; that a necessity exists for the administration of this estate as it includes residential and commercial properties and two or more debts exist against the estate; and that no interested person has applied for the appointment of appraisers and none are deemed necessary by the Court.

It is therefore ORDERED, ADJUDGED and DECREED that the Will is admitted to probate, and the Clerk of this Court is ORDERED to record the Will, together with the Application in the Minutes of this Court.

It is further ORDERED, ADJUDGED and DECREED that no bond or other security is required and that upon the taking and filing of the Oath required by law, Letters of Independent Administration with will annexed shall be issued to Dr. Sanjay Khanduja, who is appointed as Independent Administrator with will annexed of Decedent's Will and Estate, and no other action shall be had in this Court other than the return of an Inventory, Appraisement and List of Claims as required by law."

4. The Petitioner got the copy of the said order passed by the Probate Court, Texas, duly apostilled and certified, and approached various banks in India namely the ICICI Bank, Vasant Vihar, New Delhi; the Punjab National Bank (*hereinafter referred as 'PNB'*) at two of its branches, i.e., Kalkaji, New Delhi and Panipat, Haryana and the Central Bank of India, Kalkaji, New Delhi for giving him access to the assets/bank accounts of the deceased.

5. Mr. Samar Singh Kachwaha, ld. counsel for the Petitioner, submits that the ICICI Bank gave access to the Petitioner to the deceased's bank

accounts in 2017. However, both the branches of PNB at Kalkaji, New Delhi and Panipat, Haryana, as also the Central Bank of India, Kalkaji, New Delhi have not provided the Petitioner with access to the deceased's estate. The stand taken is that the probate ought to be granted by a court in India and that the copy of the order needs to be legalised by the Indian Embassy in USA. Accordingly, the present writ has been filed seeking directions to be issued to these banks to give access to the Petitioner to the bank accounts and FDs and the various moveable assets of the deceased.

6. Learned counsel for the Petitioner/Independent Administrator relies upon Section 41 of the Indian Evidence Act, 1872 to submit that even the order issued by the Probate Court, Texas, i.e., issued by a Foreign Court, would be automatically enforceable in India. He relies upon the following judgments to argue that the '*Court*' as referred to in Section 41, read with, Section 3 of the Indian Evidence Act, 1872 would also include a Foreign Court –

- *Menahem Mesha Menaham Messa & Ors. v. Moses Budin Menahem Messa & Ors.*, [1938 SCCOnline Bom 11],
- *Chander Kanta Mishra & Anr. v. Raj Sharma & Ors.*, [2019 SCCOnline Del8813] and
- *Sameer Kapoor & Anr. v. State Through Sub-Division Magistrate South, New Delhi and Ors.*, [(2020) 12 SCC 480].

7. Ld. Counsel also relies upon the notification of the Ministry of External Affairs, dated 18th November, 2020, to argue that apostilled documents are sufficient and legalisation of the same in the Indian Embassy in USA is not required. Hence, he submits that access to the deceased's assets ought to be given to the Petitioner.

8. Ld. counsel appearing for PNB, Panipat branch submits that the only concern of the bank is that the assets of the deceased testator should be safeguarded and should not fall into the wrong hands. In so far as the Central Bank of India and the PNB, Kalkaji branch is concerned, they submit that they would abide by the directions passed by this Court.

9. This Court has examined the matter. The judgment of the Probate Court, Texas is clear on the fact that the Petitioner, Dr. Khanduja has been appointed as the Independent Administrator of the deceased. The said document has also been apostilled and has been placed before this Court.

10. In this background, the question is whether the said order of the Probate Court, Texas can be recognised by courts in India. Section 41 of the Indian Evidence Act, 1872 reads:

*“41. Relevancy of certain judgments in probate, etc., jurisdiction. — A final judgment, order or decree of a **competent Court**, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.*

*Such judgment, order or decree is conclusive proof -
that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment [order or decree] declares it to have*

*accrued to that person;
that any legal character which it takes away from any
such person ceased at the time from which such
judgment, [order or decree] declared that it had ceased
or should cease;
and that anything to which it declares any person to be
so entitled was the property of that person at the time
from which such judgment, [order or decree] declares
that it had been or should be his property.”*

11. In ***Menahem Mesha Menaham Messa (supra)***, the High Court of Bombay had the occasion to consider an appeal arising out of a suit which was originally transferred from Aden, where late Bunin Menahem Mesha, the deceased testator in the matter, was domiciled. As per the decision of the Protectorate of Aden, the Defendants in the matter were the named administrators of the Will of said deceased testator. This was contested by the Appellant, the only son and heir of the deceased testator, who sought a declaration to the effect that the Appellant is entitled to the whole estate as heir, and that he was also entitled to a grant of letters of administration with respect to the deceased testator's estate and Will. The Bombay High Court observed as under :

If the judgment in question comes under s. 41, there can be no doubt that the validity of the will cannot be allowed to be re-opened. It establishes the character and status of the plaintiff as an administrator as on intestacy and takes away the character of defendants Nos. 1 to 3 as executors of the will on the ground that the will was not executed in accordance with the law applicable to the parties and is invalid.

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The Indian Evidence Act makes no distinction between a foreign Court and a British Indian Court as the Civil Procedure Code does, and I am unable to see any principle upon which such distinction should be made for the purpose of giving effect to s. 41 of the Act. The word “Court” is not defined in the Act, but s. 3 says that, unless a contrary intention appears from the context, the word “Court” is used in the Act as including all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence. This of course is not a definition, and it is clear that the word “Court” is not in terms limited to a domestic Court. Having regard to the principles on which such judgments are recognised, I see no reason to restrict s. 41 to judgments of domestic tribunals, and respectfully agree with the view of Chandavarkar, J. in the case referred to above. I think the word “Court” in s. 41 means any Court which is competent either by international law or by a statute. Assuming, however, this is not correct, the position practically remains the same, because by comity of nations such judgments are given the same recognition, as Woodroffe and Ameer Ali point out, as domestic judgments.

12. In 2019, in the matter of **Chander Kanta Mishra & Anr. [Supra]**, a Id. Single Judge of this Court, also considered a matter involving the entitlement of the Petitioners in the suit property. The Petitioners were to be substituted as beneficiaries of a Will, being legal heirs of late Dr. Shanta Sharma, a citizen of USA. The said Dr. Shanta Sharma was the beneficiary of a Will executed by a Late Major (Retd) Bhim Raj Sharma. The Court observed as under:

12. The grant of probate is a proceeding in rem as has been held in Basant Devi v. Ravi Prakash Ram Prasad Jaiswal (2008) 1 SCC 267 as well as in Chiranjilal

Shrilal Goenka v. Jasjit Singh (1993) 2 SCC 507. Further in Dr. Devika Damji Shah v. Rashmi Mukesh Shah 2012 Vol.114 (5) Bombay LR 2757 the Court held:—

“17. Mr. Shah on behalf of the wife drew my attention to the judgment of the Supreme Court in the case of Surinder Kumar v. Gian Chand AIR 1957 SC 875 showing the presumption that the judgment in a probate Court granting probate was a judgment in rem and must be presumed to have been obtained in accordance with the procedure prescribed by law. This essentially applies to Indian judgments. It would also apply to foreign judgments which are not in breach of the law relating to execution of the wills in force in India - Section 63 of the Indian Succession Act with regard to execution of the will. If a foreign judgment has seen that the requirement of Section 63 of Indian Succession Act is followed, it would certainly be conclusive and also binding upon the parties who claim their rights thereunder. This exception is specifically set out in the judgment in the case of AIR 1950 Mysore 57 DB which has held that such a judgment in rem, including judgment of a foreign Court is binding upon the parties upon the operation of Section 41 of the Indian Evidence Act but only provided those Courts are competent to pronounce the judgment as contemplated in that section. The Court would be competent and its judgment would be conclusive if they followed the law applicable in India. Such a judgment would hold good until the probate granted under such judgment is revoked also under the law in force in India being Section 263 of the Indian Succession Act.”

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5. Thus, as per trust whatever is left of the properties of deceased after distribution of gifts incurring expenses etc. shall go to the petitioners herein. Admittedly the subject property is still left and needs to be partitioned. Hence, per bare reading of Will and Trust Deed, the petitioners need to be substituted as the legal heirs of late Dr. Shanta Sharma, as her left over assets need to be distributed amongst the petitioners only.

13. Considering Section 41 of the Indian Evidence Act, 1872, the legal position, settled by the Supreme Court even as recently as in 2020, in ***Sameer Kapur & Anr. (Supra)***, is that in the case of a probate, a competent court will include a Foreign Court, and a probate granted by a foreign court would even be recognised in India. The relevant portion of the said judgment of the Hon'ble Supreme Court is as under :

“14.1 When an application under Section 276 of the Act is submitted for probate or for letters of administration with will, if any objection is raised by any body with respect to execution of the will, in that case, the applicant is required to prove the will and thereafter the will shall be probated and the court may pass an order for letters of administration. However, in a case where a will has been proved or deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, in that case, as provided under Section 228 of the Act, when a properly authenticated copy of the will is produced, the letters of administration may be granted in favour of such person. Meaning thereby, in such a situation, the will is not required to be proved again and it shall be conclusive. Therefore, Section 228 of the Act shall be an enabling provision and it confers an additional right to apply for letters of administration on the basis of such authenticated copy of the will. Therefore, as rightly

observed by the learned Single Judge and the Division Bench that Section 228 is akin to Section 276 of the Act.

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*17. Therefore, considering the law laid down by this Court in the case of Kunvarjeet Singh Khandpur, it can be said that in a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the court to perform a duty. **Probate or letters of administration issued by a competent court is conclusive proof of the legal character throughout the world.** That the proceedings filed for grant of probate or letters of administration is not an action in law but it is an action in rem. As held by this Court in the case of Kunvarjeet Singh Khandpur,; (SCC P. 468, para 15)*

“15.... ’16. ... (c)... an application [for grant of probate or letters of administration] is for the court’s permission to perform a legal duty created by a will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed.’”

Therefore, even if the will is probated by any court mentioned in Section 228 of the Act, right to get the letters of administration is a continuous right which can be exercised any time, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed.

18. Applying the law laid down by this Court in the aforesaid decision and the observations made hereinabove, the submission on behalf of the appellants

that Probate Case No. 15/2001 filed by respondent no.2 for letters of administration under Section 228 of the Act, read with Section 276 of the Act is barred by law of limitation, cannot be accepted. At this stage, it is required to be noted that even in the plaint, it is specifically pleaded that after passing away of the father of the parties in the year 2000, the appellants started intermeddling with properties bequeathed to respondent no.2, which were situated in Delhi and, therefore, left with no option, he was compelled to apply for letters of administration. Therefore, even as per the pleadings in the application, the cause of action started from the date on which the appellants started intermeddling with the properties bequeathed to respondent no.2, after passing away of the father of the parties in the year 2000. Therefore, in the facts and circumstances of the case, both the learned Single Judge and the Division Bench have rightly refused to reject the application in exercise of powers under Order 7 Rule 11 of the CPC. In the facts and circumstances of the case and as observed hereinabove, it cannot be said that the application for letters of administration was clearly barred by the law of limitation which was required to be rejected in exercise of powers under Order 7 Rule 11(d) CPC. We are in complete agreement with the view taken by the High Court.”

It is thus clear that under Section 41, a competent court includes a foreign court. So long as the probate or letter of administration is granted by a competent foreign court and the same does not violate the laws of succession in India, it can be recognised in India.

14. Further, the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 1961, i.e., the Apostille Convention, is clear to the effect that legalisation in the Indian Embassy

would not be required if the document is duly apostilled. India, being a member of the Apostille Convention since 2005, there is no requirement of legalisation of duly apostilled documents in India. The relevant portion of the Apostille Convention is as under:

“ARTICLE 2 - Each Contracting State shall exempt from legalisation documents to which the present Convention applies and which have to be produced in its territory. For the purposes of the present Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears.”

15. This is also confirmed by the notification of the Ministry of External Affairs, dated 18th November, 2020. The relevant portion of the said notification is as under:

“2. It has been brought to the notice of this Ministry that some institutes/organizations/establishments in India demand an apostilled document of a member country to be further attested by the Indian Mission/Post in that country. It is clarified that no further attestation or legalization of an apostilled document should be required in India as India is a member of the Hague Apostille Convention. An apostilled document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

3. Copy of a Note on “Issuing and Accepting Apostilles” is enclosed for ready reference. The full text of the Hague Apostille Convention and list of its member countries are available at <https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>

4. To avoid unnecessary hassle caused to general public by

demand of further legalization or attestation of an apostilled document, all concerned are requested to disseminate the information contained in paras 1, 2 & 3 above, among organizations/academic establishments, which are under their charge/in their jurisdiction or are affiliated with them. The information may also please be prominently displayed on the official websites.”

16. The above being the legal position, the only requirement for claiming rights under a probate granted by a foreign court, would be to file an apostilled copy of the judgment of the said foreign court. In view of the judgment of the Hon’ble Supreme Court and settled legal position and as also the notification dated 18th November, 2020, the following directions are issued:

- (i) The Petitioner may produce before all the three banks, PNB-Kalkaji branch; PNB-Panipat branch and Central Bank of India-Kalkaji, the copy of order of the Probate Court, Texas (USA), bearing the original seal of the apostille, dated 15th June 2010. After verification, copies of the said apostilled document, shall be accepted by the banks and access shall be given to the Petitioner.
- (ii) Within two weeks of the documents as directed above being submitted, the Petitioner will be given full access to the bank accounts/FDs of the deceased, Dr. R.K. Dhingra, including the following accounts. The details of accounts are as under:

“Dr. Rakesh Kumar Dhingra, bearing A/c No.(s) 015600PR00032591; 015600PR00032607; and 015600PR00032582 at Punjab National Bank, Kalkaji, New Delhi, and FDR A/c No(s): 037700PR00025963; 037700PR00025945; 037700PR00025972; and

*037700PR00025954 at Punjab National Bank, Panipat,
Haryana.”*

17. The petition is disposed of in these terms.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 12, 2021/mw/Ap
(corrected and released on 16th February, 2021)

