



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

% **Judgment reserved on: 8 March, 2022**
Judgment pronounced on: 15 March, 2022

+ **W.P.(C) 5619/2021 & CM APPL. 35858/2021 (delay)**

BMO TRUST COMPANY Petitioner

Through: Mr. Raj Shekhar Rao, Sr. Adv. with
Mr. Chritarth Palli, Adv.

versus

STATE BANK OF INDIA & ANR. Respondents

Through: Mr. S.L. Gupta, Adv. for SBI.
Mr. Abhinav Sharma, Adv. for RBI.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

1. The petitioner is a Trust duly registered and incorporated in accordance with the laws of Canada. It is engaged in the business of acting as a fiduciary, agent, executor or trustee on behalf of its clients. It's functioning as per the petitioner is regulated by the Trust and Loan Companies Act, S.C. 1991, c.45.

2. It is stated to have been appointed as the executor and trustee of the last will and testament of the Late Mrs. Fleurette Mehta¹ dated 01 August 2017. The aforesaid will has been duly probated by the Superior Court of Justice at Ottawa² vide its order dated 05 July 2019. A copy of the certified

¹ Testator

² Superior Court



and apostilled Will and Testament along with the order of the Superior Court of Justice has been placed on the record as Annexure P-2.

3. It has petitioned this Court seeking the following reliefs: -

- “(a) Issue an appropriate writ in the nature of Mandamus or any other appropriate writ, order or direction directing Respondent No. 1 to accept the documents submitted by the Petitioner as being in conformity with the requirements of the law and thereby allow access to the Saving Bank Account No.10415459936 and permit the Petitioner to close the said Bank Account and realise the amount contained therein by remitting the same to its bank account as mentioned in Para 9(xxi) hereinabove;
- (b) Issue an appropriate writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondent No. 1 to rectify its record and its TDS returns to reflect the correct entities, i.e., for the period from 06 December 2017 to 27 January 2019 – TDS returns of the Bank to be revised reflecting PAN of late Mrs. Fleurette Mehta [FAXPM2631D], and from 28 January 2019 onwards – TDS returns of the Bank to be revised reflecting PAN of “the Estate of late Mrs Fleurette Mehta” [AABAE6694A].
- (c) Issue an appropriate writ in the nature of Mandamus or any other appropriate writ, order or direction directing Respondent No. 2 to grant necessary and required approvals as the case may be, for enabling the Petitioner to remit the amount in the Bank Account of the Petitioner as mentioned in Para 9(xxii);”

4. It appears that the testator held a Savings Bank Account with the respondent **State Bank of India**³ at its branch at C-19, Vasant Vihar, New Delhi. Before this Court it was not disputed that the sums standing to the credit of that account stands duly covered under the order of probate as made by the Superior Court. When the writ petition was initially

³ SBI



entertained, notice came to be issued to the respondents pursuant to which a counter affidavit has been filed by SBI. On 04 August 2021, the Court took note of the submission addressed that the views of the **Reserve Bank of India**⁴ may also be obtained since the petitioner is an overseas entity and seeks to access the account of the testator and repatriation of moneys presently held in credit. Pursuant to the aforesaid order, RBI was granted time to file an affidavit explaining the statutory regimen which would govern as also its stand with respect to the prayers as made in the writ petition.

5. SBI in terms of its affidavit which has been filed in these proceedings essentially rests its objections on a Circular of 30 September 2019. According to Mr. Gupta, learned counsel representing SBI, the Circular clearly mandates a Letters of Administration being obtained from a court in India notwithstanding probate having been granted by a foreign court of competent jurisdiction. According to Mr. Gupta, notwithstanding the will having been duly probated by the Superior Court, the aforesaid circular clearly binds the respondent Bank and consequently the petitioner must be held to be obliged to obtain a Letters of Administration in respect of the last will and testament of the testator.

6. The RBI has in its short affidavit filed in these proceedings essentially submitted that since the prayers as made would necessarily entail the remittance of funds presently held in the savings bank account of

⁴ RBI



the testator abroad, the same would be governed by the provisions made in the **Foreign Exchange Management (Remittance of Assets) Regulations, 2016**⁵. RBI essentially places its case on Regulation 3 which reads thus: -

"3. Prohibition on Remittance outside India of assets held in India: -

Save as otherwise provided in the Act or rules or regulations made or issued thereunder, no person, whether resident in India or not, shall make remittance of any asset held in India by him or by any other person:

Provided that the Reserve Bank may, for sufficient reasons, permit any person to make remittance of any asset held in India by him or by any other person."

7. Learned counsel appearing for the RBI submitted that the expression "*remittance of assets*" as defined in Regulation 2(5) clearly brings within its ambit, the transfer of funds standing in deposit with a bank in India overseas. In view of the aforesaid, it was submitted that the petitioner would be required by law to make an appropriate application to RBI for the purposes of transfer of the funds standing in the savings bank account of the testator.

8. When the matter was initially heard, Mr. Rao, learned Senior Counsel appearing for the petitioner submitted that the issue stands squarely covered by the judgment rendered by a learned Judge of the Court in **Dr. Sanjay Khanduja Vs. Punjab National Bank and Anr.**⁶ Since the arguments addressed on behalf of the petitioner, rested principally on that

⁵ 2016 Regulations

⁶ 2021 SCC OnLine Del 3209



decision, it would be appropriate to advert to the facts of that case and the conclusions that ultimately came to be recorded.

9. The petitioner before the Court in **Dr. Sanjay Khanduja** had been appointed as an independent administrator of the estate of an individual residing in the United States of America. The independent administrator had been appointed by the Probate Court of Harris County, Texas in respect of the estate of the deceased. When the order of the competent court was placed before the bank which was a respondent in that matter, the stand taken was that the administrator would be obliged to obtain probate from a court in India before the funds standing and held by the bank could be remitted.

10. The learned Judge upon hearing parties proceeded to hold thus: -

“10. In this background, the question is whether the said order of the Probate Court, Texas can be recognized 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 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* [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) 114(5) Bom 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* (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.”

16. 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.”

17. 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.....”

11. The Court in **Dr. Sanjay Khanduja** significantly held that in view of Section 41 of the Indian Evidence Act, 1872, a decision rendered by a foreign court would be entitled to be recognised at par with any domestic Court. The learned Judge followed the view taken by the Bombay High Court which had held that the word “*Court*” would not be liable to be construed as being restricted to a domestic court.

12. For the purposes of deciding the issue which arose, the Court in **Dr. Sanjay Khanduja** also placed reliance upon the principles enunciated by the Supreme Court in **Sameer Kapoor and Anr. Vs. State Through Sub-**



Division Magistrate South, New Delhi and Ors.⁷ to hold that a probate or Letter of Administration issued by a competent court is conclusive proof of the legal character throughout the world. Taking note of the obligations placed in terms of the 1961 Hague Convention, the learned Judge held that an apostilled document is liable to be treated as a legalised document in India by all concerned. On a conspectus of the aforesaid, the learned Judge held that 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 that Court.

13. Mr. Gupta, learned counsel for SBI, on the other hand, submits that the Court in **Dr. Sanjay Khanduja** has failed to take notice of the relevant provisions of the Indian Succession Act, 1925⁸ and has, in any case, failed to bear in mind the circular which has been pressed into aid in support of the stand taken by the respondent Bank here. According to Mr. Gupta, even the principles laid down in **Sameer Kapoor** do not support the contention that a will duly probated by a foreign court would not be required to be certified by a domestic court by issuance of a Letter of Administration. Referring to the provisions made in Section 276 of the 1925 Act, it was submitted that the petitioner was clearly obligated to apply for and obtain Letter(s) of Administration notwithstanding a probate having been granted in respect of the will by the Superior Court.

⁷ (2020) 12 SCC 480

⁸ 1925 Act



14. Mr. Gupta has drawn the attention of the Court to the following observations as made in **Sameer Kapoor** which read thus: -

“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 anybody 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.”

15. Stress is essentially laid on the observation as occurring in the paragraph extracted above where the Supreme Court observed that where a will has been duly proved by a court of competent jurisdiction situate beyond the limits of the State, Letters of Administration “*may be granted*” in favor of such a person once a properly authenticated copy of the will is produced as envisaged under Section 228 of the 1925 Act.

16. Mr. Rao, learned counsel appearing for the petitioner, on the other hand, draws the attention of the Court to the provisions made in Section 213 of the 1925 Act. Reference is made in this regard to the specific exclusion of Indian Christians in Section 213(2) of the 1925 Act. The aforesaid provision as amended by the Indian Succession (Amendment) Act, 2002 reads as follows: -



“213. Right as executor or legatee when established.—(2) This section shall not apply in the case of wills made by Muhammadans [or Indian Christians] and shall only apply—

(i) in the case of wills made by any Hindu, Buddhist, Sikh or Jaina where such wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such wills are made within the local limits of the of the [ordinary-original civil jurisdiction] High Courts at Calcutta, Madras and Bombay, and where such wills are made outside those limits, in so far as they relate to immovable property situate within those limits.]”

17. In view of the aforesaid, Mr. Rao, learned counsel submitted that the provisions of the 1925 Act relied upon by the respondents are clearly not attracted since undisputedly the testator was an Indian Christian albeit settled in Canada. The observations in **Sameer Kapoor** which were relied upon by learned counsel for the respondent was explained by Mr. Rao, who contended that the same does not mandatorily require Letter(s) of Administration being obtained in respect of a will which has been duly probated by a competent foreign court.

18. For the purposes of accuracy and completeness of the record it would be pertinent to note that the Court finds that the Indian Succession (Amendment) Act, 2002 came to be repealed by the Repealing and Amending Act, 2015 [Act 17 of 2015]. However, since nothing significant would turn on that, the Court proceeds further to record the submissions of respective parties.



19. Insofar as the RBI is concerned, learned counsel submitted that in the absence of instructions he was not in a position to make any statement on its behalf insofar as the issue on merits is concerned. RBI restricted its position to the requirement of compliance being made with the statutory regulations noticed above.

20. As was noticed in the introductory parts of this judgment, the respondent Bank does not dispute the competence or the jurisdiction of the Superior Court to have granted probate. It is also not their case that the grant of probate was contrary to the fundamental principles and procedures which apply to testamentary proceedings, if taken before a court in India. Dealing with the validity of a judgment rendered by a foreign court, the Supreme Court in **Alcon Electronics Private Limited Vs. Celem S.A. of FOS 34320 Roujan, France and Anr.**⁹ made the following pertinent observations:-

“13. It appears that the appellant herein has accepted the order and sought for time to pay the costs. Moreover, it did not choose to approach the appellate court assailing the order and the same has attained finality. In spite of the same, the appellant filed the application opposing the execution petition filed by the respondents. The first and foremost ground of attack against the order passed by the English Court is that the order is not conclusive as per Section 13(b) CPC. Such argument appears to be attractive but we are not able to appreciate the same in the facts and circumstances of the case. Before we proceed further, it is appropriate to have a look at Sections 13 and 14 CPC which read as under:

“13. *When foreign judgment not conclusive.*—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under

⁹ (2017) 2 SCC 253



whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in India.

14. Presumption as to foreign judgments.—The court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.”

14. A plain reading of Section 13 CPC would show that to be conclusive an order or decree must have been obtained after following the due judicial process by giving reasonable notice and opportunity to all the proper and necessary parties to put forth their case. When once these requirements are fulfilled, the executing court cannot enquire into the validity, legality or otherwise of the judgment.

15. A glance on the enforcement of the foreign judgment, the position at common law is very clear that a foreign judgment which has become final and conclusive between the parties is not impeachable either on facts or law except on limited grounds enunciated under Section 13 CPC. In construing Section 13 CPC we have to look at the plain meaning of the words and expressions used therein and need not look at any other factors. Further, under Section 14 CPC there is a presumption that the foreign court which passed the order is a court of competent jurisdiction which of course is a rebuttable presumption. In the present case, the appellant does not dispute the jurisdiction of the English Court but its grievance is, it is not executable on other grounds which are canvassed before us.

37. It is to the reciprocal advantage of the courts of all nations to enforce foreign rights as far as practicable. To this end, broad recognition



of substantive rights should not be defeated by some vague assumed limitations of the court. When substantive rights are so bound up in a foreign remedy, the refusal to adopt the remedy would substantially deprive parties of their rights. The necessity of maintaining the foreign rights outweighs the practical difficulties involved in applying the foreign remedy. In India, although the interest on costs are not available due to exclusion of Section 35(3), the same does not mean that Indian Courts are powerless to execute the decree for interest on costs. Indian Courts are very much entitled to address the issue for execution of the interest amount. The right to 8% interest as per the Judgments Act, 1838 of UK can be recognised and as well as implemented in India.”

21. As is manifest from a reading of the enunciation of the legal principles in **Alcon Electronics**, the Supreme Court invoked the principle of comity of nations and of the advantages that would obtain to countries governed by the rule of law when courts adopt a position which broadly recognises substantive rights obtained in accordance with law and not allow them to be defeated by vague and assumed limitations of the concerned court. It further pertinently observed that it would be to the reciprocal advantage of courts of all nations to enforce foreign rights as far as practicable. Explaining the principles underlying Sections 13 and 14 of the **Code of Civil Procedure, 1908**¹⁰, it held that where a foreign judgment has become final and conclusive *inter partes*, it cannot be questioned except on the limited grounds which are spelt out in Section 13 itself. In the considered view of this Court, it is the aforesaid fundamental principles eloquently propounded in **Alcon Electronics** which must inform the answer that the Court proceeds to formulate while deciding the objections raised by SBI.

¹⁰ Code



22. As was observed hereinabove, SBI in the present matter does not impugn or question the validity of the grant of probate by the Superior Court on any of the grounds which are spelt out in Section 13 of the Code. Additionally, the Court notes that in **Sameer Kapoor**, the Supreme Court reiterated and reaffirmed the basic principles which were enunciated in **Kunvarjeet Singh Khandpur vs. Kirandeep Kaur**¹¹ and more particular paragraph 24 thereof which reads thus: -

“24. 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 letter of administration issued by a competent court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Succession Act, 1925 does not convey a meaning that by the proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the court to perform that duty. There is only a seeking of recognition from the court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an “application” under Article 137 of the Limitation Act, 1963.”

23. As was eloquently explained and held in **Kunvarjeet Singh Khandpur**, a probate issued by a competent court is conclusive to the legal character throughout the world. Explaining the provisions of the 1925 Act, it was held that it could not be said that rights of applicants do not come to

¹¹ (2008) 8 SCC 463



be effectively settled and secured once probate is granted. The Court also cannot lose sight of the fact that under the provisions of the 1925 Act, a probate is not mandatorily required to be obtained in respect of a will which may be presented before a competent court in the National Capital Territory. In any case, the issues raised here stand conclusively settled in favor of the petitioner in light of the judgment of the Court in **Dr. Sanjay Khanduja**. That decision has duly considered and negated an objection addressed on identical lines. The only obligation which was accorded recognition was of an apostilled copy of the will and the judgment of probate being produced.

24. Regard must also be had to the fact that a Letter of Administration in essence is not concerned with the genuineness of a will or other testamentary disposition. It essentially accords recognition upon the right of the petitioner to administer the affairs of the deceased. The order of the Superior Court has not only held that the will has been duly executed and represents the last will and testament of the testator, it has also affirmed the right of the petitioner here to represent her estate. That judgment, as is well settled, operates as a judgment in rem. The Court fails to find any justification to require the petitioner to obtain a Letter of Administration all over again from a court in India. The stand of SBI taken would have been sustainable provided there was a substantive objection raised to the manner in which the probate came to be granted or where it were established that the Superior Court while granting probate had failed to adhere to some vital aspect of procedure or a mandatory prescription which governs that grant



under the laws of India. This Court additionally finds itself unable to interpret the observations as occurring in **Sameer Kapoor** as mandatorily requiring a Letters of Administration being obtained in respect of a will which has been duly probated by a foreign court of competent jurisdiction.

25. The Court further observes that while the Circular which is relied upon may have been issued to guide banks and financial institutions generally, the same does not bind this Court when it has upon an independent consideration of the provisions of the 1925 Act as well as the judgments noticed hereinabove found that the same would not sustain. The requirement placed in terms of that circular appears to be motivated more by caution and guardedness on the part of the financial institution than upon a consideration of the provisions of the 1925 Act.

26. The relief sought with respect to the TDS certificates is occasioned by the following facts. SBI appears to have continued to deduct tax on interest which accrued on the deposit even after the demise of the testator and her husband. While the husband died on 6 December 2017, the testator passed away on 28 January 2019. It is in the aforesaid context alone that those certificates are sought to be revised and rectified. The case of the petitioner is that the bank had been duly apprised of the demise of the testator as well as the appointment of the petitioner as the executor of her estate. The assertion that there are no pending or outstanding tax liabilities standing against the name of the testator is also not disputed by the



respondents. This prayer would thus merit consideration of the competent authority in light of the provisions prescribed in the Income Tax Act, 1961.

27. Accordingly, and for all the aforesaid reasons, the writ petition along with pending application shall stand allowed in the following terms: -

- A. SBI shall in accordance with the conclusions recorded hereinabove, process the prayer for remittance as made by the petitioner in light of the judgment of the Superior Court granting probate. The aforesaid would be subject to the petitioner placing a duly apostilled copy of the will and judgment of probate before the bank.
- B. SBI would be obliged to proceed with the remittance of funds standing to the credit of the savings bank account of the testator subject to the petitioner obtaining the requisite permission from RBI in accordance with the provisions made in the 2016 Regulations.
- C. Insofar as relief (b) is concerned, the Court leaves it open to the petitioner to represent the competent authority under the Income Tax Act, 1961 for consideration of its prayer for revision and rectification of the particulars contained in the TDS certificates issued for the period between December 2017 to 27 January 2019 and also from 28 January 2019 onwards.

YASHWANT VARMA, J.

MARCH 15, 2022/neha