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

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Date of Decision: 27.10.2022

+ **FAO(OS) 109/2019 & CM Appl.25781/2019**

RITU MENON & ORS

.....Appellants

Through: Mr D.N. Goburdhan, Sr. Adv. with
Mr Rajkumar Maurya and Ms Gauri
Goburdhan, Advs.

versus

STATE & ORS

.....Respondents

Through: Mr Sumit Aggarwal with Mr Mukesh
Sachdeva, Advs. for R-1.
Mr Premtosh Mishra with Mr Vikas
Raj and Mr Vasoodev Sharma, Adv.
for R-2.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

CM APPL.25781/2019

1. This is an application filed on behalf of the appellant seeking condonation of delay in filing the appeal.

1.1 According to the appellant, the delay involved is 54 days.

2. Mr Premtosh Mishra, who appears on behalf of respondent no.2 i.e., the executor, says that he has no objection to the prayer made in the above-

captioned application being allowed.

2.1 It is ordered accordingly.

3. The above-captioned application is disposed of in the aforesaid terms.

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4. This appeal is directed against the order dated 14.02.2019 passed by the learned Single Judge in IA No.14432/2018.

5. The aforementioned interlocutory application was filed by the appellants in Testamentary Case No.64/2016.

5.1 The said application was preferred by the appellants to get themselves impleaded in the testamentary action.

6. The testamentary action i.e., the probate action, has been filed by respondent no.2.

7. Concededly, respondent no.2 is the executor of the Will dated 13.02.2011.

7.1 This Will was executed by late Dr Vimla Lal, who expired on 11.02.2016.

8. The appellants are the daughters of the sisters of the deceased i.e., Dr Vimla Lal.

9. The learned Single Judge has, to put it pithily, *via* the impugned order, declined the prayer made by the appellants before him, for being arrayed as parties to the probate action.

10. It is not disputed before us, that the appellants, amongst others, are beneficiaries under the aforesaid Will.

11. According to the learned Single Judge, the appellants have no “caveatable” interest, and that their interests, for the moment, are being protected by respondent no.2 i.e., the executor of the Will.

12. Mr D.N. Goburdhan, learned senior counsel, who appears on behalf of the appellants, says that the appellants should have been impleaded.

12.1 According to Mr Goburdhan, even the “slightest interest” that the appellants may have in the estate of the deceased gives them a legal right, to get arrayed as parties to the probate action.

13. In support of this plea, Mr Goburdhan has relied on the following judgments:

- (i) ***G. Gopal vs. C Baskar & Ors.***, 2008 (10) SCC 489
- (ii) ***Yuv Rajnarain Gorwaney vs. State & Ors.***, 2005 SCC OnLine Delhi 1207
- (iii) ***M/s Indian Associates vs. Shivendra Bahadur Singh & Ors.***, 2003 SCC OnLine Delhi 180

14. We have carefully perused the judgments cited before us.

15. None of these judgments concern person(s) who are beneficiaries under the testamentary document in issue, in those cases.

16. The expression “slightest interest” alluded to in paragraph 5 of the judgment dated 03.09.2008 rendered in ***G. Gopal*** has to be seen in the context of the fact, that the person who was seeking impleadment had a caveatable interest in the estate of the testator, and was not a beneficiary under the Will.

17. This position also emerges upon a perusal of the facts in the judgement dated 18.11.2005 rendered in ***Yuv Rajnarain Gorwaney***, as well as in the judgment dated 21.02.2003 rendered in ***M/s Indian Associates***.

17.1 In *Yuv Rajnarain Gorwaney*, the applicant sought impleadment, as he was a legal heir under Section 15(1)(b) of the Hindu Succession Act, 1956.

17.2 Likewise, insofar as *M/s Indian Associates* is concerned, the applicant was aggrieved by the fact, that even though the interim administrator appointed by the Court had sold the subject property to the applicant, parties to the probate case had entered into a memorandum of understanding (MOU) executed amongst themselves.

18. As indicated above, the ratio of these judgments, in our view, does not align with the submissions made before us, by Mr Goburdhan.

19. The other argument, that Mr Goburdhan has advanced before us, is that since respondent no.2 i.e., the executor of the subject Will has given his consent to the impleadment of the appellants, the learned Single Judge should have allowed the application preferred for the said purpose.

19.1 This submission has several exceptions.

19.2 One of them is, that in a probate action, the beneficiary need not be arrayed as a party, unless the executor is acting in a manner which is prejudicial to the interests of the beneficiary.

20. No such situation has arisen in the instant case, at least not up until now.

21. We are also of the opinion, that since the judgment rendered in a probate action is a judgment in *rem*, the executor cannot arrive at a compromise.

21.1 The Court is required to either allow the petition i.e., grant the probate, or reject the petition.

22. The last contention of Mr Goburdhan is that under Section 283(1)(c) of the Indian Succession Act, 1956, while issuing citation, all persons claiming to have any interest in the estate of the deceased should have been noticed, so that they could “come and see the proceedings” before the grant of probate or letters of administration.

23. In our view, this is a provision which safeguards the concerns of those, who have a caveatable interest in the subject Will.

24. A perusal of the impugned order shows, that a submission, broadly, to this effect was made before the learned Single Judge. The learned Single Judge, in that context, made the following observations:

“21. Counsel for the applicants whose application for impleadment has been dismissed, states that liberty be granted to the counsel for the applicants to watch the proceedings in this testamentary case on each and every date of hearing when this case is listed, whether before this court or before the Joint Registrar or before the commission if any issued for recording of evidence.

22. All the said hearings are in open court and it is always open, not only to the counsel for the applicants but to all his associates, to watch the same and no liberty is required therefor.”

25. We are of the opinion, that there can be no objection whatsoever, to the appellants or their counsel, watching the proceedings.

26. Mr Mishra cannot but accept this position.

27. Therefore, we find no reason to interfere with the impugned judgment.

28. The appeal is, accordingly, disposed of with a direction, that if the executor were to act contrary to or inconsistent with the interests of the appellants, they would, then, have the right to approach the Court, by way of

an appropriate application.

29. The application, if any, filed, at that juncture, will be examined keeping in mind, the position of the law, and the facts that obtain at that point in time.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

OCTOBER 27, 2022/pmc

