

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

127

CR-4513-2022

Date of Decision: 17.11.2023

JASBIR BASSI

....Petitioner

Versus

GENERAL PUBLIC AND ORS

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ajaivir Singh, Advocate for the petitioner.

Mr. Piyush Khanna, Advocate for
Mr. Aditya Sharda, Advocate
for respondents No. 2 to 4.

SANJAY VASHISTH, J.(Oral)

1. Present revision petition has been filed by the petitioner- Jasbir Bassi, partially challenging the order dated 12.09.2022 (Annexure P-1) passed by learned Civil Judge (Sr. Division), Jalandhar (NRI Court) in SUCC-82-2021, only to the extent, whereby, condition of furnishing of indemnity bonds for an amount of Rs.50,00,00,000/-(Rs.50 Crores) with one surety in the like amount has been ordered to be submitted to safeguard the future claim of expected claimant.

2. Learned counsel for the petitioner submits that petitioner filed a petition bearing No. SUCC-82 of 2021 before learned trial Court for grant of succession certificate in favour of the petitioner herself, two sons (respondents No.2 and 3), and one daughter

(respondent No.4). The General Public was impleaded as respondent No.1 in the original petition. As none appeared on behalf of respondent No.1 i.e. General Public, the succession petition was allowed by holding that petitioner and respondents No. 2 to 4, are legally entitled to the extent of equal share, being class-I legal heirs, of deceased-Kulwinder Singh Bassi, who died on 04.09.2021. The succession certificate was issued in regard to the Bank deposits in the name of the deceased-Kulwinder Singh Bassi, details of which are mentioned in tabulated form in the impugned order dated 12.09.2022 and for the sake convenience, the same is reproduced herebelow also:

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Sr. No.	Document in the name of	Number	Bank's Name	Amount Outstanding
1.	Term deposit in the name of late Kulwinder Singh Bassi	08100300026609	Bank of Baroda, GT road, Phagwara, District Kapurthala	Rs.99,64,429
2.	Term deposit in the name of late Kulwinder singh Bassi	08100300026265	Bank of Baroda, GT road, Phagwara, District Kapurthala	Rs.97,44,271/-
3.	Term deposit in the name of late Kulwinder Singh Bassi	08100300026140	Bank of Baroda, GT road, Phagwara, District Kapurthala	Rs.97,81,336/-
4.	Saving account in the name of late Kulwinder Singh Bassi	12631010000381	HDFC Bank, BMC, Chowk, Jalandhar	Rs.11,93,116.94/-
5.	Term deposit in the name of late Kulwinder Singh Bassi	50300366694221	HDFC Bank, BMC Chowk, Jalandhar	Rs.7,27,00,650.25/- equivalent to 7,27,650.025 GBP @ 100 INR

6.	Term deposit in the name of late Kulwinder Singh Bassi	50300366692777	HDFC Bank, BMC Chowk, Jalandhar	Rs.8,06,00,524.31/- equivalent to 8,06,524.31 GBP @100 INR
7.	Saving account in the name of late Kulwinder Singh Bassi	0205000506705901	Punjab National Bank, GT road, Hoshiarpur	Rs.26,465.19/-
8.	Term deposit in the name of late Kulwinder Singh Bassi	020500DT00001123	Punjab National Bank, GT Road, Hoshiarpur	Rs.1,09,98,773/-
9.	Term deposit in the name of late Kulwinder Singh Bassi	038300FN0000118	Punjab National Bank, GT road, Phagwara, District Kapurthala	Rs.1,06,10,842/-
10	Term deposit in the name of late Kulwinder Singh Bassi	038300TD01653526	Punjab National Bank, GT Road, Phagwara, District Kapurthala	Rs.1,04,83,376/-
11	Term deposit in the name of late Kulwinder Singh Bassi	038300TD01653517	Punjab National Bank, GT Road, Phagwara, District Kapurthala	Rs.1,02,66,131/-
12	Term deposit in the name of late Kulwinder Singh Bassi	038300TD01656116	Punjab National Bank, GT Road, Phagwara, District Kapurthala	Rs.1,02,66,131/-
13	Term deposit in the name of late Kulwinder Singh Bassi	038300TD00017710	Punjab National Bank, GT Road, Phagwara, District Kapurthala	Rs.90,79,050/-
			Total:	Rs.24,59,32,340.69/-

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Thus, succession certificate pertains to the Bank deposits for a total amount of Rs.24,59,32,340.69/-, to be shared by all the succession certificate holders in equal share.

4. Learned counsel further submits that learned trial Court while ordering for issuance of succession certificate, in the *relief clause*, imposed one harsh condition without assigning any sound reason that the said relief is subject to the furnishing of indemnity bonds in the sum of Rs.50 Crores with one surety in the like amount and subject to the claim of any better claimant that may arise in future.

Paragraph No.15 of the impugned order is reproduced herebelow:

'RELIEF

15. On the basis of the findings given above the petition is allowed. The succession certificate is ordered to be issued in favour of the petitioner and respondents no.2 to 4 in equal share qua the amount lying deposited in the name of the deceased Kulwinder Singh as detailed in Schedule 'A' (part of the petition) and for further interest accrued upon the same subject to furnishing indemnity bonds in the sum of 50,00,00,000/- with one surety in the like amount and subject to the claim of any better claimant that may arise in future. The petition is allowed subject to deposit of succession fee, if not deposited earlier. Petition stands allowed accordingly. File be consigned to the record room Jalandhar after 30 days of the order whether the indemnity bonds are furnished or not. However, taking into consideration the amount involved the petitioner is also at liberty to furnish multiple sureties not more than 10 in number in order to secure the succession certificate.'

5. Learned counsel for the petitioner also submits that to satisfy the conscious of this Court, petitioner had already placed on record the affidavit of Jasbir Bassi (petitioner herein) dated 03.08.2022, affidavit of Anmol Bassi (respondent No.2) dated

04.08.2023 and affidavit of Amrit Singh Bassi (respondent No.3) dated 02.08.2023. Said affidavits have been got attested (except respondent No.4) from the Consulate General of India at Dubai. Therefore, the genuineness of the said affidavits is also beyond any doubt.

6. Learned counsel for the petitioner submits that even as per Section 375 of the Indian Succession Act, under certain circumstances, requirement of furnishing of surety can be exempted depending on the facts of each case.

To substantiate his plea, learned counsel for the petitioner relies upon a judgment of Telangana High Court, passed in CR No.1281 of 2021 dated 05.01.2022 titled as ***Gudala Padmalatha and another Vs. Aurobindo Pharma Ltd.,*** Law Finder Doc Id #1975320 and refers paragraphs No.7,8, and 9, which are reproduced hereunder:

'7. Perused the material, It is intelligible by the impugned order that the condition of furnishing security imposed to meet the contemplation under Section 375 of the Indian Succession Act. A plain reading of the provision in indicating that when the learned Judge proposed to proceed under sub-Section 3,4 of Section 272 of Indian Succession Act, may grant certificate basing on the prima facie title, however, as a condition precedent with direct for furnishing one or more sureties. For a better appreciation Section 373 (3) and (4) of the Indian Succession Act, is re-produced hereunder:

section 373 (3) of Indian Succession Act: *If judge cannot decide the right to the certificate without determining questions of law or fact which seem to be intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant, if he appears to be the person having prima facie the best title thereof.*

Section 373(4) of Indian Succession Act:*when there are more applicants than one for a certificate, and it appears to the Judge that more than one of such applicants are interested in the estate of*

deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

8. *In the light of the above decision a plain reading of the impugned order is not disclosing any of such question of law and fact, which cannot be determined under summary proceedings much less existence of any claim other persons other than the petitioners herein. Thus what recording such a circumstance directing the petitioners to furnish security bond with one surety would be improper and onerous on the petitioners. Therefore, in the legal and factual position, it shall be held that the learned Judge erred in imposing the condition of surety without recording satisfaction of requirement as stipulated in section 375 (3) and (4) of the Indian Succession Act.*

9. *In the result, this Civil Revision Petition is allowed and the direction of furnishing a security bond for Rs.21,37,600/- with one surety for granting succession certificate in the impugned order is set aside. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.*

Petitioner further relies upon the judgment passed by Division Bench of Delhi High Court in W.P. (C) No.9108 of 2011 dated 02.01.2012 titled as **Rajesh Kumar Sharma and another Vs. Estate of Late Sh. Raj Pal Sharma and Anr.**, Law Finder Doc Id #383863, and submits that as per the opinion of the Division Bench, the imposition of the security is not a mandatory provision of law. Relevant paragraphs Nos. 10 and 11 of the aforesaid judgment, reads 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) v. State, 127(2006) DIT 468-2006 IV AD (Delhi) 735** following the Judgment of the Calcutta High Court in **Manmohini Dassi v. Taramoni AIR 1929 Calcutta 733** and finding the grantee to be the sole*

*legatee/beneficiary under the Will of all the properties bequeathed thereunder, directed furnishing of security bond of a nominal amount only. Similarly in **Asha Sikka v. 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.'

Petitioner also relies upon the judgment subsequently passed by Delhi High Court in CM(M) 265 of 2020 and CM APPL. 7880 of 2020, titled as **Arvind Nanda Vs.State**, Law Finder Doc ID #1702066, wherein the Division Bench judgment of Delhi High Court titled as **Ravi Mohan Kaul Vs. State of Ors [CM(M)477/2018, decided on 18.12.2019]** was also relied. Relevant paragraphs Nos. 5,6, and 10 of the aforesaid judgment, are also reproduced herebelow:

'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 natural heir of the deceased and there are no objections by the other claimants.

7.xxx

8.xxxx

9.xxxx

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.'

6. Taking note of the submissions and the cited judgments and more for the reason that there is no opposition by any of the person from General Public, despite effecting of due service upon it, this Court deems it appropriate to consider the validity/reasonability of the impugned order regarding the imposed condition of furnishing of the indemnity bonds for a sum of Rs.50 crores with one surety in the like amount.

This Court realizes that while holding the genuineness of the right of the petitioner and the respondents No. 2 to 4 no sound reason for imposing condition of furnishing of indemnity bonds for such a heavy amount i.e. sum of Rs.50 crores with one surety in the like amount or subject to the claim of any better claimant that may

arise in future; has been discussed. Therefore, in the absence of any visible apprehension, this Court deems it appropriate to set aside the condition imposed in relief paragraph No.15 of the impugned order. Further, this Court is also of the view if strong apprehension in regard to the future claim, if any, is there, same may be expressed in the order in clear terms.

7. Therefore, the impugned condition enumerated in the relief clause of paragraph No.15 of the impugned order dated 12.09.2022 is hereby set aside and the Court concerned is directed to re-decide the issue regarding the said condition after going through the judgments cited by the petitioner and by expressing its apprehensions, if any and by applying the law of reasonable discretion, within a period of four weeks from the date of receipt of the certified copy of this Court.

8. Let copy of the order be forwarded to the learned District and Sessions Judge Jalandhar, for its further transmission to the learned Court concerned, to pass an appropriate order.

9. Petition stands disposed of.

November 17, 2023

rashmi

Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no