

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

%

Order reserved on: 17 February 2023

Order pronounced on: 28 April 2023

+ TEST.CAS. 94/2019 & I.A. 17957/2019(U.O. 39 R. 1 & 2),
I.A. 12506/2020(U.O. VII R. 10 CPC), I.A. 3766/2021(Delay in
Rej.), I.A. 3767/2021(Delay in Reply), I.A. 5027/2021(Delay in
Reply), I.A. 16325/2022(U.O. VI R. 17 CPC), I.A. 3230/2023

DR. LATA MAITRI & ORS. Petitioners

Through: Ms. Radhika Chandresh, Adv.
Petitioner No.2 in person.

versus

STATE OF DELHI & ANR. Respondents

Through: Mr. Brajesh Kr. Srivastava, Mr.
Umesh Kr. Gupta, Advs. for R-
2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

1. The present petition for grant of **Letters of Administration**¹ has been instituted by the mother [petitioner no.1], father [petitioner no.2] and brother [petitioner no.3] of the **late Dr. Shruti Maitri**² who is stated to have expired in Delhi on 08 March 2019. The LoA have been claimed in respect of properties described more fully in Schedule B of the petition and the same is reproduced hereinbelow: -

¹ LoA

² the deceased

“

Schedule B

Description of the properties left behind by Dr. Shruti Maitri:-

(1) Superannuation Fund with First State Super vide membership no. 3847784, Account No. EK9699. The value of this fund is approx. 260937 (Aus.) Dollar = Rs. 1.27 crores.

(2) Investment in Flat/Unit No. 306, Meriton Towers, 330 Church Street, Parramatta, New South Wales, Post Code – 2150, Australia of Rs. 60 lacs. Petitioner's share in the said flat as per investment of Dr. Shruti Maitri. The value of this share at present is being valued at Rs. 60 lacs + interest @ 18 p.a. = Rs. 70 lacs.

(3) Cash amount (pre-marriage savings) approx. Rs. 6 lacs in savings Bank Account with Andhra Bank.”

2. The second respondent is admittedly the husband of the deceased while respondent nos. 3 and 4 are bodies established to administer superannuation funds in the State of New South Wales, Australia. As per the admitted case of the petitioners, the deceased married the second respondent at Delhi on 03 December 2017 as per Hindu customs. It is their case that the deceased suffered an injury on 02/03 February 2019 and travelled to India on 01 March 2019 for requisite medical procedures and treatment. The petitioners further disclose that the deceased was admitted in a hospital on 04 March 2019 and was operated upon on 05/06 March 2019. It is stated that on 07 March 2019, the deceased on account of post operative complications suffered pulmonary embolism and unfortunately passed away on 08 March 2019.

3. The petition was based on an assumption that first petitioner had been nominated as the beneficiary in the superannuation funds. In terms of an intimation dated 19 August 2019, the first petitioner was

informed by respondent no. 3 of the proposed release of all monies standing to the credit of the superannuation fund of the deceased in favour of the second respondent.

4. The petitioners contended that the deceased was an Indian citizen who was working in Australia on a work permit and thus the administration of her estate would be governed by Indian law. In paragraph 35 of the present petition, the petitioners alleged that the deceased had identified a flat in Australia and since she had not been granted a Permanent Resident status in that country, the same was purchased in the name of the second respondent. As per their case, the deceased is stated to have contributed 80% of the total money required towards upfront payment for acquisition of the said property. It is also conceded that the flat was mortgaged and the installments in respect thereof were paid out of the joint account maintained by the deceased and the second respondent.

5. The petition for the grant of LoA was essentially based on the petitioners' assertion that since the properties in Australia had been purchased by the deceased along with the second respondent with the former having made substantial investments therein, the petitioners by virtue of being the parents would be entitled to the grant of LoA. It was their stated case that the second respondent being the husband is excluded from pre-marriage and parental assets. The claim was based upon the petitioners' understanding of Section 15 of the **Hindu Succession Act, 1956**³ with it being asserted that in terms of sub-

³ the HSA

section (2)(a) thereof the estate of the deceased would devolve upon the petitioners.

6. On 19 December 2019, the Court while issuing notice on the petition and framing directions for the publication of a citation, had granted an injunction restraining the second respondent from either alienating or creating third party interests in the immovable property at Australia or receiving superannuation funds standing to the credit of the investments made by the deceased. The Court also restrained the respondent no.3 from releasing any payments to either the second respondent or any third party.

7. The second respondent has filed objections on this petition and has referred to the records as maintained by the **First State Super Trustee Corporation**⁴ a body corporate constituted under the **Superannuation Administration Act, 1996**⁵ as well as to the records of the State Super Financial Services Australia Limited to contend that in the superannuation funds, it was the second respondent who stood recorded as the solitary beneficiary. It was further asserted that the aforementioned two body corporates are governed by the **Superannuation Industry (Supervision) Act, 1993**⁶ read with the **Superannuation Industry (Supervision) Regulations, 1994**⁷. Reliance was also placed on the adjudicatory orders passed by the **Australian Financial Complaints Authority**⁸ which too had recognized the right of the second respondent to be the sole beneficiary of all funds of the

⁴ FSS

⁵ The 1996 Act

⁶ The 1993 Act

⁷ The 1994 Regulations

⁸ AFCA

deceased held with respondent no.3. The respondent has also raised various jurisdictional challenges including in respect of the maintainability of the instant petition and the assumption of jurisdiction by this Court for the purposes of grant of LoA.

8. As would be evident from a perusal of Schedule B, the petitioners essentially staked a claim over the funds standing to the credit of the superannuation funds opened by the deceased with FSS and the immovable property detailed as Flat / Unit No. 306, Meriton Towers, 330 Church Street, Parramatta, New South Wales, Post Code - 2150, Australia. Additionally, they also sought the grant of LoA in respect of monies lying in a savings bank account opened by the deceased with the Andhra Bank.

9. For the purposes of examining the issue of maintainability of the petition and the right of the petitioners to seek the grant of LoA, the Court deems it apposite to notice and answer the following issues which arise. The first question which confronts the Court is whether the petitioners can be recognized to have a right to seek the issuance of LoA in light of the adjudicatory orders which have been passed by the competent authorities in Australia. On the record is an order dated 23 June 2021 passed upon the complaint made by the petitioner no.1 and dealing with the rights of the petitioners to claim the monies standing to the credit of the superannuation funds.

10. Dealing with the aforesaid issue, AFCA has passed the following order: -

“2.4 Was the mother a dependant of the deceased?

The mother was not a dependant of the deceased

....

All information provided by the mother shows a close and supportive relationship, rather than an interdependency relationship, by reference to the factors in the regulations. As noted in the Explanatory Statement, it is not expected the concept of an interdependency relationship would extend to a parent/child relationship.

In her application for payment of the benefit dated 17 June 2019, the mother stated she was not financially dependent on the deceased at the time of the deceased's death. On the other hand, she stated when she visited the deceased in Australia the deceased provided her with financial support by way of rent, accommodation, food, utilities, entertainment and outings.

Case law indicates that even partial financial dependence requires regular financial contribution, rather than payment of ad hoc amounts. The relevant law is set out in Section 3.3 of this determination. The mother's expectation of care and support from the deceased in her old age does not constitute financial dependency.

I am satisfied the mother was not a dependant of the deceased. She was not in an interdependency relationship with the deceased immediately before she died or financially dependent on the deceased at the date of the deceased's death.

2.5 What law applies to the distribution of the benefit?

Australian superannuation law applies to the distribution of the benefit

The mother states the deceased was a citizen of Country A and was not an Australian permanent resident. She says she was a foreign national who was working in Australia, therefore the distribution of her estate must be considered under Country A's laws.

Whilst the deceased was not a permanent resident of Australia, she was a resident of Australia and was applying for permanent residence in Australia. She also paid tax under the taxation laws of Australia and thus under Section 10 of the *Superannuation Industry(Supervision) Act* she is an Australian resident.

The mother says, as a Testamentary Petition is pending in Country A, the trustee and AFCA do not have jurisdiction to make a decision about the estate of a foreign national.

I am satisfied the deceased became a member of the fund when she started working in Australia and her superannuation contributions were made under Australian Law.

Contrary to the mother's submissions, Country A's succession laws are not relevant to the distribution of the benefit, regardless of her nationality or resident status.

The fund is governed under Australian law, and under Australian law superannuation benefits do not form part of a deceased person's estate. In deciding the distribution of the benefit, a trustee applies Australian superannuation law and not Australian succession law.

The mother also raises questions as to why the deceased was not noted on the title deeds of the apartment. This is not a matter AFCA considers is relevant to the distribution of a benefit under superannuation law, given the couple were clearly co-habiting there.

2.6 Was the trustee's decision fair and reasonable?

The trustee's decision was fair and reasonable

The trustee says it is satisfied the spouse was the only dependant of the deceased and he was also financially dependent on the deceased. It considers the spouse takes priority over an LPR, in the distribution of the benefit. Thus, it would not change its decision if an LPR was appointed.

The trustee says it is required to ensure benefit payments are made promptly to beneficiaries. It considers it would be unreasonable to await the outcome of the mother's application to be appointed LPR in Country A, as the outcome of that application would not change its decision.

The purpose of superannuation is to provide for dependants, who would have continued to rely on that person for financial support had they not died.

I am satisfied the trustee has complied with the fund's trust deed and the relevant law. The spouse was the only dependant of the deceased who was also financially dependent on her.

I find the decision of the trustee to pay the entire death benefit to the spouse was fair and reasonable in its operation in relation to the mother and the spouse in all the circumstances. Therefore, under section 1055(3) of the *Corporations Act 2001*, AFCA must affirm the trustee's decision."

11. As would be evident from the aforesaid extract, AFCA had upheld the right of the spouse, the second respondent here, to receive

the entire death benefit. AFCA has essentially upheld the decision taken by the Trustee, namely, FSS in this respect. It must be noted that the petitioners have been unable to dislodge the contention of the second respondent that the affairs of the FSS as well as all issues relating to the administration of the superannuation funds would be governed by Australian law. It is the statutory regimen as applicable to the Trust which appears to have been borne in mind by AFCA while passing orders in the complaint filed by petitioner no.1. While it was urged that AFCA is not a statutory body whose decision may be recognised or placed on the pedestal of a competent court, this Court finds itself unable to countenance that submission bearing in mind the undisputed fact that under the statutory provisions governing the administration of the fund, it is the decisions taken by that body which are ordained to prevail. In any case, the assumption on which the present petition was based, namely, of the first petitioner being the recorded beneficiary is clearly not borne out from the evidence placed before this Court.

12. More importantly and it must necessarily be noticed that pension has been consistently recognized to be a subject which would be insulated from the provisions of the HSA and be governed solely by the provisions of independent schemes framed in relation thereto. Courts have consistently held that pension does not form part of the estate of a deceased and the beneficiaries thereof upon the demise of an employee would have to be identified in accordance with the rules which are applicable. The Court deems it apposite to extract the

following passages from the decision in **Violet Issaac (Smt) vs. Union of India**⁹: -

“4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

5. In *Jodh Singh v. Union of India* [(1980) 4 SCC 306 : 1980 SCC (L&S) 549] , this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed: (SCC p. 310, para 10)

⁹ (1991) 1 SCC 725

“Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition.”

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.”

13. The Court also deems it apposite to bear in mind the following observations made by the Supreme Court in its decision in **Nitu vs. Sheela Rani**¹⁰: -

“16. So far as the provisions of the Hindu Succession Act, 1956, are concerned, it is true that the properties of a Hindu, who dies intestate would first of all go to the persons enumerated in Class I of the Schedule as per the provisions of Section 8 of the said Act and therefore, so far as the properties of late Shri Yash Pal are concerned, they would be divided among the respondent mother and the appellant wife, provided there is no other family member of late Shri Yash Pal alive, who would fall within Class I heirs, but position in this case, with regard to pension, is different.

17. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in *Violet Issaac v. Union of India* [*Violet Issaac v. Union of India*, (1991) 1 SCC 725 : 1991 SCC (L&S) 551] and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his will by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is

¹⁰ (2016) 16 SCC 229

entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any will and it appears that late Shri Yash Pal had died intestate and no will had been executed by him.”

14. The more fundamental question which arises is with respect to the standing of the petitioners to maintain the present petition itself. It would be pertinent to note that Section 218 of the **Indian Succession Act, 1925**¹¹ envisages the grant of LoA to any person who according to the applicable rules for distribution of the estate would be entitled to the whole or any part of the estate of the deceased. The rules for distribution would undoubtedly have to be identified in light of the provisions contained in the HSA. The rules of succession in case of female Hindus are set out in Sections 14, 15 and 16 thereof. Those provisions are reproduced hereinbelow: -

“14. Property of a female Hindu to be her absolute property.—
(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the

¹¹ ISA

decree, order or award prescribe a restricted estate in such property.

15. General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter), not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu.—The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely: -

Rule 1.—Among the heirs specified in sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.”

15. As per Section 14 any property possessed by a female Hindu may be held by her as an exclusive owner and not in any limited capacity. These statutory changes which came to be introduced in 1956 were intended to place female Hindus at par with their male counterparts. In terms of Section 15(1)(a), the property of the female Hindu who dies intestate would devolve firstly upon the sons, daughters and the husband. The second class of beneficiaries are recognized to be the heirs of the husband. Parents of a female Hindu who dies intestate fall in Section 15(1)(c). As per the rules enshrined in Section 16, heirs specified in one entry are to be preferred over those in any succeeding entity.

16. Undoubtedly, it would be the second respondent who would fall under Section 15(1)(a) and thus have a preeminent right to succeed to the estate of the deceased. The provisions of Sections 15 and 16 have been lucidly explained by the Supreme Court in **Arunachala Gounder vs. Ponnusamy**¹². The Court deems it apposite to extract the following passages from that decision: -

“75. The scheme of sub-section (1) of Section 15 goes to show that property of Hindu females dying intestate is to devolve on her own heirs, the list whereof is enumerated in clauses (a) to (e) of Section

¹² (2022) 11 SCC 520

15(1). Sub-section (2) of Section 15 carves out exceptions only with regard to property acquired through inheritance and further, the exception is confined to the property inherited by a Hindu female either from her father or mother, or from her husband, or from her father-in-law. The exceptions carved out by sub-section (2) shall operate only in the event of the Hindu female dies without leaving any direct heirs i.e. her son or daughter or children of the pre-deceased son or daughter.

76. Thus, if a female Hindu dies intestate without leaving any issue, then the property inherited by her from her father or mother would go to the heirs of her father whereas the property inherited from her husband or father-in-law would go to the heirs of the husband. In case, a female Hindu dies leaving behind her husband or any issue, then Section 15(1)(a) comes into operation and the properties left behind including the properties which she inherited from her parents would devolve simultaneously upon her husband and her issues as provided in Section 15(1)(a) of the Act.”

17. The scope and applicability of Section 15(2) and which excludes properties inherited by a female Hindu from her father, her husband or her father-in-law from her estate which would otherwise be governed by Section 15(1) was succinctly explained by the Supreme Court in **Bhagat Ram vs. Teja Singh**¹³ in the following terms: -

“6. On a perusal of the two sub-sections we find that their spheres are very clearly marked out. So far as sub-section (1) is concerned, it covers the properties of a female Hindu dying intestate. Sub-section (2) starts with the words “Notwithstanding anything contained in sub-section (1)”. In other words, what falls within the sphere of sub-section (2), sub-section (1) will not apply. We find that Section 15(2)(a) uses the words “any property inherited by a female Hindu from her father or mother”. Thus property inherited by a female Hindu from her father and mother is carved out from a female Hindu dying intestate. In other words any property of a female Hindu, if inherited by her from her father or mother would not fall under sub-section (1) of Section 15. Thus, property of a female Hindu can be classified under two heads: every property of a female Hindu dying intestate is a general class by itself covering

¹³ (1999) 4 SCC 86

all the properties but sub-section (2) excludes out of the aforesaid properties the property inherited by her from her father or mother.

7. In addition, we find the language used in Section 15(1) read with Section 16 makes it (*sic* out) clearly, the class which has to succeed to the property of a Hindu female dying intestate. Sub-section (1) specifically states that the property of a female Hindu dying intestate shall devolve according to the rules set out in Section 16. So, in case sub-section (1) applies, then after the death of Santi, Indro cannot inherit by succession but it would go to the heirs of the predeceased husband of Santi.”

18. The position of self-acquired property of a Hindu female was explained by the Supreme Court in **Omprakash vs. Radhacharan**¹⁴ as under: -

“9. The law is silent with regard to the self-acquired property of a woman. Sub-section (1) of Section 15, however, apart from the exceptions specified in sub-section (2) thereof does not make any distinction between a self-acquired property and the property which she had inherited. It refers to a property which has vested in the deceased absolutely or which is her own. The self-acquired property of a female would be her absolute property and not the property which she had inherited from her parents. In that view of the matter, we are of the opinion that sub-section (1) of Section 15 of the Act would apply in the instant case and not sub-section (2) thereof.”

19. Form the above exposition of the law and on a conjoint reading of Sections 14 to 16 of the HSA, this Court is of the firm opinion that the assets which were held by the deceased and would fall within the category of self-acquired property would be liable to be recognized as being exclusive in character and would consequently have to follow the rules of distribution as specified in Section 15 and 16.

20. It must be remembered that although Sections 15(1) makes no such explicit distinction, the carving out of inherited properties from

¹⁴ (2009) 15 SCC 66

the estate of a female Hindu who dies intestate occurs by virtue of the provisions of Section 15(2) alone. However, the provisions of Section 15(2) clearly have no application in the facts of the present case since the petitioners have failed to establish that the properties set out in Schedule B had been inherited by the deceased either from her father, or the father-in-law. The Schedule B properties thus would constitute the self-acquired estate of the deceased.

21. The petitioners would have been entitled to petition for grant of LoA provided there was no heir of the deceased of the category set out in Section 15(1)(a) and 15(1)(b). Since the second respondent clearly falls within the ambit of Section 15(1)(a), the petitioners would clearly have no locus to maintain the petition or seek grant of LoA. Bearing in mind the unambiguous provisions made in Sections 15 and 16 of the HSA, it would be the second respondent alone who could be recognized in law as being the person entitled to the whole or part of the estate of the deceased according to the rules of distribution.

22. While parting, it may be noted that in terms of the written submissions which have been filed, the petitioners had additionally sought to sustain their right to maintain the instant petition by virtue of the provisions of Section 218(3) of the ISA. Section 218(3) would come into play only in a situation where no person who would otherwise be covered and falling within the ambit of sub-section (1) would have applied for LoA. That is clearly not the situation which obtains here. More fundamentally, the petitioner nos. 1 and 2 by virtue of having made certain contributions towards the upkeep and upbringing of their daughter cannot possibly be recognized as

creditors of her estate. The law, as it presently stands, does not envisage a parent who may have incurred expenditure in the upbringing of a child being viewed as a creditor.

23. Accordingly, and for all the aforesaid reasons, the petition fails and shall stand dismissed.

YASHWANT VARMA, J.

APRIL 28, 2023

bh

