

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :-10th July, 2024

FOR COMPLIANCE:

38. TP/1030/2024 P. C. : Shri. N. R Gandhi Ld. Advocate for the Petitioner
[Original]
(ECHCBM0201521
2024)

1. On 27.06.2024 query was raised about the capacity of the petitioner to present this petition vide Section 259 of Indian Succession Act, 1925.

2. Ld. advocate for the petitioner is relied upon the decision of the Hon'ble Delhi High Court in case of ***Raj Rani Bhasin v. State* (2009 SCC OnLine Del 1054 : (2009) 158 DLT 713 at page 719)**. He invited my attention towards paragraph No. 15 of the said Judgment, which is reproduced as under:-

15. The Supreme Court in *B. Banerjee v. Smt. Anita Pan*, (1975) 1 SCC 166 : AIR 1975 SC 1146 (though dissented with on another point in *Deena v. UOI*, (1983) 4 SCC 645 : AIR 1983 SC 1155) held that where two interpretations are possible, that which validates the statute and shortens litigation, should be preferred to the one which invalidates or proliferates. It was further held that the Courts must avoid multiplicity of litigation. Any interpretation of a statute which will obviate purposeless proliferation of litigation, without whittling down the effectiveness of the effectiveness of the protection for the parties sought to be helped by the legislation, should be preferred to any literal, pedantic, legalistic or technically correct alternative. In that case also the Apex Court was conscious that to shorten litigation in the manner directed therein, they were straining the language to the little extent of interpreting the expression in the statute under consideration. However, it was held that public justice and social gain ought to be promoted. Such considerations are germane to the larger concept of justice, which it is the duty of the Courts to promote.

3. He argued that when two interpretations are available then interpretation favorable to the litigant must be adopted. This rule is laid down by the Hon'ble Supreme Court and it is binding. In the cited case, there was an issue before the Hon'ble Court to substitute the petitioner. In the paragraph No. 19 the issue regarding the right to sue survive was discussed. In cited case, The petition was filed

originally by Smt. Raj Rani Bhasin for Letters of Administration of the estate of her son Shri C.P. Bhasin. The said estate was pleaded to be comprising land and builtup property at 180/2/272 situated Rajpur Road, Dehradun, plot of land Q-37, Gurgaon, Haryana and a locker in State Bank of India, Rajpur Road, Dehradun. Even though the entire estate of which administration rights were sought was situated outside Delhi, the petition was filed in this Court pleading the deceased to be at the time of his death residing in Delhi. During pending the petition, petitioner(mother of the deceased) died, leaving behind her legal heirs (namely, R.P. Bhasin and Swarup Prakash Bhasin, two daughters, namely, Smt. Pomela Chopra and Smt. Kiran Sachdeo and the widow and daughter, namely, Neelam Bhasin and Ms. Sunaina Khanna of a pre-deceased). Hence, Interim Application (IA No. 3514/2006) was taken out to substitute the petitioner and notice said interim application was served upon the legal heirs. The Hon'ble Court in para no. 25 it is laid down that;

“25. Coming now to the facts of the present case, the estate of which administration is sought is of the deceased brother of one of the petitioners and of the deceased brother of the predecessor of the other petitioners. They are claiming the rights through the mother of the deceased upon whom alone the said estate devolved by succession. All close relatives who could possibly have had objection have either consented to the grant of administration or chosen not to oppose. The only difference today is that of the two petitioners who were substituted in place of the original petitioner, one has expired. The result of declining the application for substitution would be to compel them to institute proceedings afresh. With respect, I am unable to concur with the old Calcutta judgments and the recent judgment of the Division Bench of Bombay High Court. With respect, the Division Bench of the Bombay High Court has proceeded on a technical view of the matter and with respect whereto there can be no disagreement. However, the Court in that case was not faced with

the practical difficulties/delays arising in disposal of such petition and with the contention considered by me above of the waste in following such an interpretation/procedure. I, applying the principles discussed above, hold the petition to be maintainable. Accordingly, IA No. 14400/2007 for substitution is allowed.”

4. Considering this position, the Hon’ble Delhi High Court has taken the view which was favorable to the litigant. However, in the present petition, the petitioner is seeking Letters of administration (De-bonis Non) vide sec. 259 of the Indian Succession Act, 1925 (for short “IS Act”). As per the said section, it is duty of the petitioner to satisfy that the petitioner is entitled to earlier grant. This provision is co-related with Section 218 of the IS Act. Hence, said provisions are reproduced as under:-

“CHAPTER I.—Of Grant of Probate and Letters of Administration

218. To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.—(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them. (3) When no such person applies, it may be granted to a creditor of the deceased.

Grant of effects unadministered

Sec. 258 Grant of effects unadministered.

*..... *****”*

“Sec. 259. Rules as to grants of effects unadministered.—In granting letters of administration of an estate not fully administered, the

Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.”

5. As per sec. 218 of the IS Act, the Letters of Administration can be granted to the person who would be entitled for the estate of the deceased. In the present petition, the petitioner’s predecessor along with other legal heir of the deceased was entitled to the estate of the deceased and therefore grant was issued in his favour. However, petitioner in TP/1727/2019 (Behjat Hussain) died without administering the entire property.

6. However, as per sec. 259 of IS Act, “and shall grant letters of administration to those persons **only** to whom original grants might have been made.” these wording, imposed one more condition to issue such grant (Debonis-non) is that the petitioner of such petition (de-bonis-non) should be person to whom original grants might have been made.

7. No doubt, upon the death of the Behjat Shamshad Hussain (a petitioner, in the earlier petition, having No.1727/2019) his heirs are entitled to inherit the estate which would be allotted to his share. However, at the time of the death of Behjat Shamshad Hussain there are other legal heirs of the deceased, to whom original grant might have been granted.

8. Hence, the petitioner to satisfy that the petitioner comes within the category of person who has been defined under sec. 259 of the IS Act in order to proceed with the Testamentary Petition.

9. S. O. to 31.07.2024

10.07.2024

**Officer on Special Duty,
with Testamentary Department**