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

+ **FAO(OS) 13/2024**

**MANGAT RAM ALAGH**

..... Appellant

Through: Mr. Puneet Taneja with Mr.  
Manmohan Singh Narula and Mr.  
Amit Yadav, Advocates.

versus

**STATE & ORS.**

..... Respondents

Through: Mr. Rahul Malhotra and Ms. Shruti  
Gupta, Advocates for R-4

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Date of Decision: 25<sup>th</sup> January, 2024

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T ( O R A L )**

#### **C.M.No.4830/2024**

1. Keeping in view the averments in the application, the delay in filing the present appeal is condoned.
2. Accordingly, the application stands disposed of.

#### **C.M.No.4831/2024**

3. Exemption allowed, subject to all just exceptions.
4. Accordingly, the application stands disposed of.

#### **FAO(OS) No.13/2024 & CM APPL. 4829/2024**

5. This appeal filed under Section 10 of the Delhi High Court Act, 1966 ('DHC Act') impugns the order dated 28<sup>th</sup> November, 2023, passed in Test. Cas. 28/2003 ('Probate petition'), titled as '**Mangat Ram Alagh v. State**',



whereby the learned Single Judge allowed the I.A. No. 9241/2023 filed on behalf of Respondent No. 2(iii) i.e., Anu Duggal, seeking permission to lead evidence and consequently, took the Respondent No.2(iii)'s affidavit of evidence on record.

6. The Appellant has filed the Probate petition seeking probate qua Will dated 09<sup>th</sup> September, 1991, executed by his father i.e., late Shri Harbans Lal Alagh. In the said petition, the Class-I legal heirs of the testator were impleaded, which included his son i.e., Respondent No. 2. The beneficiaries under the said Will were also impleaded, which included Respondent No. 9.

7. The Respondent No. 2 was the father of Respondent No. 9. The said Respondents filed their joint written statement dated 12<sup>th</sup> January, 2005, disputing the genuineness of the said Will.

8. The Respondent No. 2 expired during the pendency of the proceedings on 11<sup>th</sup> March, 2019. Subsequently, the Respondent No.2(iii) filed an application under Order XXII Rule 4 of Code of Civil Procedure, 1908 ('CPC') seeking her impleadment as one of the legal heirs of Respondent No. 2. The said application was allowed and the Respondent No. 2(iii) along with Respondent No.2's wife, namely, Asha Alagh and son, Sundeep Alagh, were impleaded as legal heirs in the said petition.

9. The recording of evidence in the Probate petition was initially concluded on 10<sup>th</sup> January, 2017. However, upon filing of an application, the learned Single Judge vide order dated 17<sup>th</sup> February, 2017 permitted the legal heirs of Respondent No. 4 to lead evidence and the same stands concluded as on 7<sup>th</sup> March, 2023. At this stage, Respondent No. 2(iii) filed the application bearing I.A. No. 9241/2023 seeking permission to lead evidence in consonance with the stand taken by Respondent No. 2 in his



written statement dated 12<sup>th</sup> January, 2005. The said application was opposed by the Appellant herein; however, the learned Single Judge has vide impugned order allowed the said application.

*Arguments of the Appellant*

10. Learned counsel for the Appellant states that the Respondent No.2 and his son i.e., Respondent No.9, filed a joint written statement dated 12<sup>th</sup> January, 2005.

10.1. He states that pertinently, the deceased Respondent No.2 during his life time elected not to lead any oral evidence and the same is evident from a perusal of order dated 29<sup>th</sup> September, 2016. He states that the Respondent No.9 on the said date made a statement before the learned Single Judge that he and Respondent No.2 i.e., his father, will not file any evidence by way of affidavit. He states that vide order dated 6<sup>th</sup> July, 2022, the Respondent No. 2(iii) was permitted to join the proceedings from the stage at which the proceedings stood as on the said date. He states that therefore, Respondent No. 2(iii) could not have been permitted to lead evidence contrary to the statement made on behalf of Respondent No. 2 on 29<sup>th</sup> September, 2016.

10.2. He states that Respondent No. 2(iii) was estranged from Respondent No. 2 and her family members and she is acting against the interest of the remaining family members.

10.3. He states that the evidence of all the Respondents stood concluded as on 10<sup>th</sup> January, 2017 and subsequently on 7<sup>th</sup> March, 2023 and, therefore, the Respondent No. 2(iii) could not have been belatedly granted permission to lead evidence in the year 2023. He states that thus, grant of the said permission is contrary to the record.



10.4. He states that the impugned order is not appealable under Order XLIII of CPC and therefore, the present appeal has been filed under Section 10 (1) of the DHC Act.

11. This Court has heard learned counsel for the Appellant and perused the record.

12. The learned Single Judge vide impugned order permitted Respondent No. 2 (iii) to lead evidence with an observation that the said evidence will be in consonance with the stand taken by Respondent No. 2 in his written statement dated 12<sup>th</sup> January, 2005. The learned Single Judge has thus, set out the scope of the evidence which Respondent No. 2(iii) has been permitted to lead and has not been given a carte blanche by the impugned order.

13. The learned Single Judge has recorded that the matter was still at the stage of recording of evidence as on January, 2023 and in these circumstances, permitted the application of Respondent No. 2(iii) seeking permission to lead evidence. Pertinently, the learned Single Judge has already issued directions for expeditious recording of evidence.

14. The impugned order has been challenged by invoking Section 10(1) of the DHC Act, the provisions whereof stipulates that an appeal shall lie from the ‘judgment’ of the Single Judge to a Division Bench. The phrase ‘judgment’ as it appears in the said provision has been authoritatively interpreted and explained by the Full Bench of this Court in ***Jaswinder Singh vs. Mrigendra Pritam Vikramsingh Steiner***<sup>1</sup> with reference to the judgment of Supreme Court in ***Shah Babulal Khimji vs. Jayaben D.***

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<sup>1</sup> 2013 (133) DRJ 1 (FB)



**Kania**.<sup>2</sup> The conclusion of the Full Bench in **Jaswinder Singh** (Supra) reads as under: -

*“39. We, thus, conclude by laying down the following principle of law:*

*In case of an order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order under Section 104 read with Order 43 of the said Code which meets that test of a “judgment” that decides matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned as per the parameters laid down in **Shah Babulal Khimji** case (supra) by the Supreme Court, an appeal to the Division Bench would exclusively lie under Section 10 of the said Act and not under Clause 10 of the Letters Patent.”*

15. We are of the considered opinion that the impugned order passed by the learned Single Judge allowing Respondent No. 2(iii) to lead evidence does not satisfy the test of ‘judgment’ as enunciated in the aforesaid judgment of the Full Bench. The impugned order does not decide any matter of the moment, which cannot await challenge as per Section 105 read with Order XLIII Rule 1(A) of CPC. Therefore, the present appeal challenging the impugned order is not maintainable.

16. The gravamen of the grievance of the Appellant is that the proceedings have been prolonged due to the grant of an opportunity to Respondent No. 2(iii) to lead evidence. In this regard, we note that the Probate petition is next listed before the learned Joint Registrar on 31<sup>st</sup> January, 2024 for recording of the evidence of Respondent No. 2(iii). The impugned order records that the affidavit of evidence of Respondent No. 2(iii) has been taken on record. Accordingly, the learned Joint Registrar is directed to conclude recording of evidence of Respondent No. 2(iii) expeditiously and preferably within one (1) month from the next date of

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<sup>2</sup> (1981) 4 SCC 8



hearing fixed before it and place the matter for final disposal before the learned Single Judge. The learned Joint Registrar is directed not to grant any unnecessary adjournment to either party.

17. The learned Single Judge is requested to take up the matter for final disposal upon conclusion of recording of evidence.

18. With the aforesaid directions, the present appeal and the application stand disposed of.

**ACTING CHIEF JUSTICE**

**MANMEET PRITAM SINGH ARORA, J**

**JANUARY 25, 2024/rhc/aa**