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

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Date of decision: 02.04.2024

+ **FAO(OS) 2/2024**

KIRAN D. PATKI & ANR.

..... Appellants

Through: Mr Ashish Dholakia, Sr. Advocate with Mr Amit Agrawal, Mr Rahul Kukreja, Ms Sana Jain and Ms Ananya Narain, Advocates along with appellants in person.

versus

THE STATE & ORS.

..... Respondents

Through: Mr Bharat Arora, Advocate for respondent nos.2 to 4 along with respondent nos.2 to 4 in person.
Mr Harender Kumar Sangwan with Mr Shubham Sagar and Mr Bhupender Singh, Advocates for applicant in CM 17397/2024.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 19346/2024 [Application filed on behalf of the appellants seeking to place on record affidavits]

1. Issue notice.

1.1 Mr Bharat Arora, learned counsel, accepts notice on behalf of the non-applicants/contesting respondents, i.e., respondents no.2 to 4.



2. This is an application filed on behalf of the appellants to place on record affidavits accompanying the said application.
3. To be noted, respondents no.2 to 4 are physically present in Court.
4. Upon instructions, Mr Arora says that he does not wish to file a reply as respondents no.2 to 4 have no objection if the affidavits accompanying the application are taken on record.
5. Accordingly, the prayer made in the application is allowed.
6. The affidavits of the appellants are taken on record.
7. The application is disposed of.

FAO(OS) 2/2024 and CM APPL. 17397/2024 [Application filed on behalf of the applicant for recovery of rental charges] and CM APPL. 1304/2024 [Application filed on behalf of the appellants seeking interim relief]

8. This appeal is directed against the judgment dated 17.11.2023 passed by the learned Single Judge.
9. Via the impugned judgment, the learned Single Judge allowed the probate petition, and thereafter, granted Letters of Administration in favour of respondents no.2 to 4 concerning the Will dated 27.09.2012 [hereafter “WILL”], executed by the testatrix Ms Kanval Dhillon.
- 9.1 Consequential directions were also issued for submission of necessary administration and surety bonds, and the requisite stamp duty.
10. The instant appeal has been preferred by the two siblings of the deceased Ms Kanval Dhillon. The siblings have assailed the judgment of the learned Single Judge on several grounds, including the following:
 - (i) Firstly, only one attesting witness was produced although the second attesting witness was available. In other words, the objection put forth was that both witnesses should have been examined.



(ii) Secondly, the attesting witness who had been examined had no recollection of the testatrix, i.e., Ms Kanval Dhillon appending her signatures on the WILL.

(iii) Thirdly, since the WILL tendered before the Court contained alterations, there were grave doubts about its genuineness. Furthermore, the alterations made in the WILL did not bear the signatures of the testatrix.

11. Mr Arora, who appears on behalf of respondents no.2 to 4, does not dispute the fact that the alterations made in the subject WILL were not countersigned by the testatrix.

11.1 Mr Arora also does not contest the submission advanced on behalf of the appellants that if the second attesting witness was available, the said witness ought to have been examined.

12. Given the fact that the WILL was replete with alterations that were not counter-signed by the testatrix, to accept the WILL as genuine would require a leap of faith. Having regard to this position, we are of the view that the impugned judgment cannot be sustained. The impugned judgment is set aside.

13. However, we may note that Mr Ashish Dholakia, learned senior counsel, who appears on behalf of the appellants, based on explicit instructions, states that the appellants would like to make payments out of the estate of the testatrix as per Annexure-A appended to CM APPL. 19346/2024.

13.1 Besides this, Mr Dholakia says that payment to the applicant who has preferred CM APPL. 17397/2024 i.e., Safdurjung Safe Vaults, amounting to Rs.3,06,000/- will also be paid out of the estate of the testatrix.

13.2 The statement of Mr Dholakia is taken on record.



14. The appeal is thus disposed of in the following terms:

- (i) As indicated above, the impugned judgment is set aside.
- (ii) However, given the statement made by Mr Dholakia, the appellants will remit Rs.7,38,80,000/- to respondents no.2 to 4.
- (iii) Respondents no.2 to 4 will, in turn, disburse the stipulated amounts to persons specified in Annexure-A appended to CM APPL. 19346/2024. This responsibility is cast jointly and severally on respondents no.2 to 4.
- (iv) The Registry will release the amounts deposited pursuant to orders dated 24.05.2016 [read with order dated 11.08.2016], 10.07.2017, and 17.01.2022, along with accrued interest to the appellants. The appellants will, upon receipt of the said amount, remit Rs.7,38,80,000/- to a designated joint bank account created by respondents no.2 to 4. The details concerning the joint bank account will be furnished to the appellants within ten (10) days of receipt of a copy of the order. In case the amount received is less than Rs.7,38,80,000/-, the appellants will fund the deficit amount, in discharge of their obligation, as captured in paragraph 14(ii) of the order.
- (v) The appellants will pay Safdurjung Safe Vaults Rs.3,06,000/- within two (2) weeks of receipt of a copy of the order.
- (vi) Except for the amounts indicated in Annexure-A appended to CM APPL. 19346/2024, the remainder of the estate will vest in the appellants.

15. Pending applications shall also stand disposed of.

RAJIV SHAKDHER, J

AMIT BANSAL, J

APRIL 2, 2024 /tr