

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 08th May, 2025

FOR HEARING :

109. TP/2715/2024 PC.: Shri. Dipesh Jain Ld. Advocate for the Petitioner

[Original]

(ECHCBM02025842

024)

with

IA(L)/12212/2025

(AMH20230021802

C20250005)

with

WILL/1107/2024

1. Ld. advocate for the petitioner submitted that the Petition is filed for Grant of Letters of Administration With Will annexed of a Will executed by Subramonya Ayyar, alias Subramonya A.R. Ayyar, alias Subramonya Anantharama Ayyar, alias Subramonya Anantha Rama Ayyar. Petitioner, namely Balan Rama Ayyar, is the son of the Testator.

2. He firstly invited my attention towards the provision of the Will regarding the appointment of Executor or Trustee of the trust, which referred in Article-2 of the Will of the Testator. As per Article No.4.1 of the said Will, Bavani Ayyar is appointed as a Executor of this Will. However, she is bedridden and she is not able to do her day to day affairs without assistance and therefore, she can not act a executor of this Will. Hence, according to the petitioner vide Sec. 232(b) the Indian Succession Act, 1925 (for short "IS Act"), the executor of the Will is incapable to file the probate Petition.

3. He invited my attention towards Article No.4.2 of the said Will, which provides that in case of incapacity of the executor or any for other reason if office of executor becomes vacant then testator has appointed (1) Kannan Ayyar and (2) Rajan Ayyar as executor. Out of them, Rajan Ayyar since deceased to testator. Hence, only Kannan Ayyar was available to assume the said capacity.

4. At this Juncture, Ld. advocate for the petitioner invited my attention towards the Order of the Hon'ble Superior Court of California, County of Alameda, USA along with the pleading averred in the Paragraph No. 9 of the Petition. It is submitted that as Kannan Ayyar failed to file complete and accurate accounting for the The Bavani And Subramonya Ayyar Trust and therefore, he was removed from the Trustee of the said Trust. Apart from this, the said Kannan Ayyar has restrained from marshling with or dealing the property of the trust. Furthermore, the Court has appointed the petitioner and daughter of the deceased, namely Priya, as successor Co-trustee of the said Trust. Hence, within the meaning of Sec. 232(b) of

IS Act, Kannan Ayyar is Legallly incapable to act as an Executor and Trustee of the Above referred Trust. Therefore, there is no need to issue citation to the executor vide Sec. 230 of the IS Act.

5. Vide Article-2 of the Will, the testator has acknowledged a formation/creation of a Trust, namely “SUBRAMONYA AYYAR AND BAVANI AYYAR 2014 TRUST” and it is mentioned that property is given to the trustees of the said Trust.

6. Ld. advocate for the petitioner has pointed out the Order of the Superior Court of California, County of Alameda, USA, particularly H1 and H2. It is submitted that Bavani Ayyar is unable to provide for her personal needs for physical health, Food, etc and she is unable to manage her financial Resources or to resist the fraud or undue influences. Hence, the Court vide order clause No. 18, appointed the petitioner and Priya Ayyar as Conservator of Bavani Ayyar. Furthermore, the Court has directed conservators to furnish Bond. By the said Order, Petitioner and Priya have been authorized to Marshal any all assets, whenever located including but not limited to Withing Country of India. Furthermore, the Document marked as H-2, is the Letters of Conservatorship for person and Estate.

7. Ld. advocate for the petitioner pointed out the medical report of Bavani Ayyar(Exh.I) and submitted that assistance is being taken from Mountain Vista of Ojai to provide day to day care and assistance to Bavani Ayyar. In view of this certificate and on the basis of the Order of the Court(Exh.H-1), Ld. advocate for the petitioner submits that Bavani Ayyar, due to her physical capacity, is not capable to perform the duty of the executor under the Will. Hence, she is incapable, as defined in the Article 4.1 and 4.2 of the Will.

8. Hence, Ld. advocate for the petitioner submits that in view of the Order refereed in paragraph No. 9 of the petition and Order Copy(Exh.-F), the Kannan Ayyar is removed from the post of Trustee of the trust. Hence, said Kannay Ayyar is, now legally incapable, to act as a executor under the Will vide Article-4.2 as per provisions of Sec. 232(b) of the IS Act. Ld. advocate for the petitioner in earlier hearing of the petition has relied upon the decision of the Hon’ble Delhi High Court in case of **SHALINI CHAUDHARY SHARMA Through Rajat Aneja Vs. THE STATE AND ORS (FAO(OS) 42/2021 & CM APPLs. 44763/2021 and 19704/2024)**. In the said order, it is laid down that restraining the executor from administering the estate, by an order in Interim Application making executor “legally incapable” with

the meaning of Sec. 232(b) of IS Act.

9. Ld. advocate for the petitioner submits that there is no need to issue citation vide Sec. 230 of the IS Act, in view of Orders referred at Exh.H-1 and H-2 to the petition. However, by way of precaution, petitioner has filed the Interim Application to satisfy the Hon'ble Court that the petition, filed by the petitioner, is maintainable being the conservator of the Bavani Ayyar.

10. Ld. advocate for the petitioner, at this juncture, pointed out that the Interim Application IA(L)/12212/2025 in TP No. 2715/2024 has been taken out for dispensation of an requisition to furnish an Administration Bond. Furthermore, vide prayer Clause 26(c) of the Said Interim Application petitioner prays that, -

“(c) permit the Petitioner to maintain the captioned Petition for letters of administration and / or to waive any office objection thereto;”

11. In view of pending this application and fact that the application is supposed to be listed before the Hon'ble Court, it would be proper to refrain from the deciding this point. Hence, adjourned.

12. S.O. to 10.06.2025

08.05.2025

Officer on Special Duty,
with Testamentary Department

