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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 27/2021**

MS SONALI SHARMA

.....Appellant

Through: Mr. S.K. Bhaduri and Ms.
Neetu Gupta, Advs.

versus

THE STATE (NCT OF DELHI) AND ANRRespondents

Through:

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **20.03.2025**

**CM APPL. 9309/2025 – FOR MODIFICATION OF JUDGMENT
AND DECREE in FAO 27/2021**

1. This application is moved on behalf of the applicant/appellant seeking modification of the impugned judgment dated 06.01.2020, passed by the learned Administrative Civil Judge, Additional Rent Controller, Central District, whereby the application moved on behalf of the applicant/appellant for grant of succession certificate following the death of her mother Smt. Sunita Sharma, who expired on 22.01.2016 at Delhi, was partially allowed to the effect that she was made entitled to half of the debts and securities of her deceased mother in terms of the debts and securities, as reflected in the document Ex. PW-2/A (collectively) and PW-2/B (collectively), which were in the nature of fixed deposits in several banks to the extent of Rs.6,23,007/- lying in the name of deceased mother.

2. Learned counsel for the applicant/appellant has pointed out that it was the case of the applicant/appellant that her father had abandoned her mother and he had been missing since 1994. The learned Administrative Civil Judge was of the opinion that no document had



been produced so as to show that the father had died or that he was missing.

3. The present appeal was instituted on 21.01.2021, assailing the impugned judgment dated 06.01.2020, whereby the succession certificate was granted to the appellant to the extent of 50% of the estates left behind by her mother.

4. Notice has already been issued to the respondent No. 1/GNCTD.

5. Learned counsel for the appellant has pointed out, in the interregnum that the appellant/plaintiff instituted a suit seeking a decree of declaration against the State to the effect that his father Sh. Rakesh Sharma must be deemed to have died in terms of presumption under Section 108 of the Indian Evidence Act, 1872.

6. It is borne out from the record that the suit bearing No. CS SCJ 1025/2021 titled '**Sonali Sharma vs. State, Government of NCT of Delhi**', has since been decreed *vide* order dated 18.01.2025, thereby the following final directions have been passed:

“18. Applying the aforesaid settled law on the facts of the case, from the testimony of PW-1 and PW-3, it becomes clear that Sh. Rakesh Sharma has not been heard of by anybody who would have naturally heard of such man to have been alive. Ex.PW-1/6 i.e. the surviving member certificate of mother of the plaintiff Smt. Sunita Sharma also strengthens the case of the plaintiff as it reflects that father of the plaintiff Sh. Rakesh Sharma is not one of the surviving members after the death of her mother, which in essence shows that Sh. Rakesh Sharma has predeceased her. Furthermore, it is noticeable that no objection from any corner has come on record after publication in the newspaper 'The Statesman' dated 05.03.2022 in terms of orders passed by this Court and no person from the public has opposed the present plaint or contended that he has seen or heard of Sh. Rakesh Sharma in the last seven years.

19. Furthermore, there is no reason to disbelieve the testimony of PW-1 and PW-3 which shows that Sh. Rakesh Sharma has not been heard of by the persons who would have ordinarily been



aware about him being alive. Ex.PW-1/4 i.e. the complaint dated 05.03.1996 made by the mother of the plaintiff regarding the missing of her husband Sh. Rakesh Sharma also supports the case of the plaintiff. In such circumstances, plaintiff cannot be saddled any further to provide any other clinching evidence to prove the civil death of her father Sh. Rakesh Sharma as the rules of evidence prescribed under Section 108 of Indian Evidence Act, 1872, would be squarely applicable to the facts of such unfortunate circumstances and would assist the plaintiff in 'showing that her father Sh. Rakesh Sharma has died a civil death.

20. In the considered opinion of this Court, plaintiff has sufficiently proved on record that the presumption under Section 108 of the Indian Evidence Act, 1872 is attracted in the present case as Sh. Rakesh Sharma has not been heard of even by her daughter or his brother-in-law i.e, PW-3 since 1994. This Court does not see any reason to doubt the testimonies of PW-1 and PW-3 and from their testimonies, it is established on record that Sh. Rakesh Sharma has been missing since the year 1994 and he could not be found despite all possible efforts to trace him. In terms of provisions of Section 107 and Section 108 of Indian Evidence Act, 1872, presumption regarding civil death of Sh. Rakesh Sharma is attracted and no evidence to counter such version of the plaintiff has come on record during the entire trial despite publication of the same. Accordingly, suit of the plaintiff is hereby decreed and it is declared that Sh. Rakesh Sharma, S/o Sh. Manohar Lal has died a civil death. No order as to costs.”

7. In view of the aforesaid decree obtained by the applicant/appellant, now there is now no legal hinderance to raise a presumption that the deceased Smt. Sunita Sharma, who was the appellant’s mother, left behind no legal heirs other than the present applicant/appellant.

8. Accordingly, the present application is allowed. The impugned judgment dated 06.01.2020, is hereby modified to the effect that the applicant/appellant shall be entitled to full realisation of all the securities/FDs, which are left behind by her mother in terms of Ex. PW-2/A (collectively) and PW-2/B (collectively).

9. Accordingly, in view of the fact that 50% of the amount of FDs have already been released by her, the appellant will be entitled to



claim the amount in full, as above, subject to fulfilling liability to make payment of the requisite Court fee and indemnity bond for the remainder of the amount in accordance with law before the learned Administrative Civil Judge concerned.

10. The appeal also stands disposed of in the aforesaid terms.

DHARMESH SHARMA, J.

MARCH 20, 2025/*gunn/Sa*