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

% **Date of decision: 17th April, 2025**

+ **FAO 131/2023, CM APPL. 28739/2023 & CM APPL. 28741/2023**

SMT. SMITA ARYAAppellant

Through: **Mr. Gagan Mathur and Mr. Shitanshu, Advs.**

versus

SHRI JAG MOHAN MANCHANDA & ORS.Respondents

Through: **Mr. Harish Khanna, Adv. for R-1.**

Mr. Tushar Sannu and Mr. Sourav Verma, Advs. for R-5.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The appellant, who is daughter and legal heir of late Mr. Man Mohan Manchanda, who was arrayed as respondent No.2 in the probate petition instituted by the respondent No.1 herein/petitioner, is preferring this appeal under Section 299 of the Indian Succession Act, 1925 [“ISA”] read with Section 96 and Order XLI of the Code of Civil Procedure, 1908 [“CPC”], thereby impugning the judgment dated 19.11.2019 and orders dated 06.09.2018, 28.08.2019, 04.02.2023 and 16.02.2023 passed in Probate Case bearing PC No. 42404/2016 titled as ‘Jag Mohan Manchanda v. State & Ors.’.



2. Briefly stated, the respondent No.1 herein/petitioner, Mr. Jag Mohan Manchanda, preferred a petition on 14.10.2009 under Section 276 of the ISA for grant of Letters of Administration in respect of the Will dated 25.08.1983 left behind by late Mr. Chaman Lal Manchanda [**“deceased-testator”**], who passed away on 16.10.1990. It is a matter of record that Mrs. Manorma Manchanda, the mother of respondent No.1 herein/petitioner had pre-deceased her husband Mr. Chaman Lal Manchanda on 09.10.1981 leaving behind two sons and a daughter, i.e., the respondent No.1 herein/petitioner, Shri Man Mohan Manchanda and Ms. Indu Sena, both arrayed as respondents No. 2 and 3 respectively in the probate petition.

3. Suffice it to state that till the time respondent No.2/Man Mohan Manchanda was alive, he contested the grant of Letters of Administration in respect of the aforesaid Will in favour of respondent No.1 herein/petitioner. However, the learned Probate Court *vide* judgment dated 19.11.2019 decided the matter in favour of respondent No.1 herein/petitioner thereby holding that deceased-testator was in sound disposing state of mind and the Will dated 25.08.1983 was his last and final Will. It is pertinent to mention here that the respondent No.3 in the probate petition did not contest the petition for Probate moved on the behalf of the respondent No.1 herein/petitioner.

4. It is also pertinent to mention that respondent No.2/ Mr. Man Mohan Manchanda passed away during the pendency of the probate proceedings on 24.09.2016 and on application under Order XXII Rule 4 read with Section 151 of the CPC, his legal heirs, namely the present appellant besides Smt. Renu being the widow of the deceased and their son Mr.



Mohit Manchanda were impleaded in the matter so much so that “no objections” were filed on behalf of the widow, as well as son of the deceased respondent No.2/Mr. Man Mohan Manchanda.

5. It appears that insofar as the present appellant is concerned, she being the legal heir No.3 of the deceased respondent No.2/Mr. Man Mohan Manchanda was proceeded *ex parte vide* order dated 28.07.2019.

6. In the aforesaid background, an application under Order IX rule 13 read with Section 151 of the CPC, along with prayer for revocation of Letters of Administration granted in favour of the respondent No.1 herein/petitioner *vide* judgment dated 19.11.2019 in PC No. 42404/2016, was moved on behalf of the appellant. The said application came to be dismissed by the learned Probate Court *vide* order dated 04.02.2023 and the said order is assailed in the present appeal besides earlier judgment dated 19.11.2019.

ANALYSIS & DECISION:

7. Having heard the learned counsels for the parties and upon perusal of the record, this Court has no hesitation in holding that the present appeal is bereft of any merits. The reasons are not far to seek. **First things first**, it would be expedient to reproduce the reasons accorded by the learned Probate Court while dismissing the aforesaid application *vide* impugned order 04.02.2023, which read as under:

“11. Perusal of the record further reveals that the notice in terms of order dated 07.02.2017 was served upon the present applicant through his brother Sh. Mohit Manchanda on 11.02.2017. It has nowhere been denied by the applicant that she was not informed by her brother Sh. Mohit Manchanda about receipt of notice by him on behalf of the present applicant. In fact, on a bare perusal of the order dated 26.05.2017 as well as 19.09.2017, it is apparent that the present applicant was duly informed about the application of



petitioner u/o 22 Rule 4 r/w Section 151 CPC, in as much as, on 26.05.2017, Sh. A.K. Sharma, Advocate has filed his vakalatnama on behalf of applicant's brother and mother, and filed his memo of appearance on behalf of the applicant seeking time to file his vakalatnama on behalf of the applicant.

12. In fact, on 19.09.2017, Sh. A.K. Sharma, advocate has filed his vakalatnama on behalf of present applicant. The present applicant has not denied her signatures on the aforesaid vakalatnama dated 15.09.2017 despite the fact that the aforesaid fact of filing of Vakalatnama by Sh. A.K. Sharma, advocate was specifically mentioned by the nonapplicant/ petitioner in his reply to the application to which no re-joinder has been filed by the present applicant. On a bare comparison of signatures of applicant on her amended application as well as affidavit accompanying the same with her signatures on Vakalatnama dated 15.09.2017 in favour of Sh. A.K. Sharma, Advocate, it is apparent that the signatures on the aforesaid vakalatnama are of the applicant.

13. It is significant to note that it was on the basis of aforesaid vakalatnama that Sh. A.K. Sharma advocate has given "No Objection" to the impleadment of the present applicant as one of the LR's of deceased respondent no. 2 on 19.09.2017. It is significant to note that the Court, vide order dated 23.01.2019 issued notice to all the three LR's of deceased respondent no. 2 for recording of their statements whether they had any objection to the petition filed by the non-applicant or not and the court notice issued in terms of order dated 23.01.2019 to the present applicant was duly served upon her mother namely Smt. Renu on 12.02.2019. It has nowhere been alleged in the present application that the applicant was not informed by her mother about receipt of the aforesaid notice. 14. Be that as it may, counsel of the present applicant, on 16.02.2019, has provided fresh address of the present applicant of Hyderabad along with her mobile number and thereafter court notice was sent to the present applicant on her Hyderabad address, however, Time new roman same was not received back. Subsequently, petitioner has provided e-mail address of the present applicant by way of an application i.e. Smitaarya23@gmail.com and on an application of the petitioner, notice was permitted to be served upon the present applicant through email on her aforesaid email ID vide order dated 28.05.2019. Perusal of the record reveals that court notice of the present petition was thereafter duly served upon the present applicant through email sent by Nazarat Branch, Central District, THC on 20.08.2019 on the aforesaid email ID, however, the applicant had failed to appear despite service of the notice through e-mail on the next date i.e. 28.08.2019. She was accordingly proceeded Ex-Parte.



14. It is significant to note that the applicant has not even denied that the e-mail ID to which the notice was sent on 20.08.2019 through Nazarat Branch, Central District, THC, Delhi was not her correct e-mail ID.

15. Under the aforesaid circumstances, in my considered opinion, the present applicant had notice of pendency of PC no. 42404/16 at least since the date of signing of vakalatnama dated 15.09.2017 by her in favour of Sh. Ashok Kumar Sharma, Advocate and she has filed the present application u/o 9 Rule 13 r/w Section 151 CPC on the basis of false plea that she was never served with any notice from the Court and hence could not participate in the proceedings, while vaguely alleging that she had come to know about the Ex-parte judgment in the last week of December 2019 from some relative without disclosing the exact date as well as the name of the aforesaid relative from whom she had acquired the aforesaid intimation.

16. It is significant to note that the applicant was proceeded Ex-parte vide order dated 28.08.2019, whereas, the present application has been filed by her on 17.01.2020 i.e. after expiry of the prescribed period of limitation on the basis of absolutely vague plea that she had come to know about the Ex-parte judgment only in the last week of December 2019 from some relative. Application is thus also liable to be dismissed as the same is hopelessly barred by limitation.

17. In view of the aforesaid discussion, the application of Ms. Smita Arya u/o 9 Rule 13 r/w Section 151 CPC is hereby dismissed.

18. Ordered accordingly.”

8. On a careful perusal of the aforesaid reasons would go to suggest that not only in the application but even in this appeal, the main plank of the submissions of the appellant was that she was not aware of the pendency of the proceedings and much mileage was sought to be taken based on the strength of the order dated 23.01.2019 passed by the learned Probate Court, whereby Court notices were ordered to be issued to her but which were apparently never served upon her.

9. However, what the appellant is very conveniently concealing is that she was duly served with the notice of the application under Order XXII Rule 4 of the CPC so much so that appearance was put on her behalf by Mr. A.K. Sharma, Advocate , who was also representing her mother and



brother, on which date he stated that Smt. Renu Manchanda and Mr. Mohit Manchanda did not want to contest the probate petition and he sought time to file a reply on behalf of the legal heir No.3, i.e., the present appellant. On the subsequent date, i.e., 19.09.2017, a vakalatnama was filed by Mr. A.K. Sharma, Advocate on behalf of the present appellant, i.e., legal heir No.3 of the deceased respondent No.2. There is no denial by the appellant anywhere or challenge that the said vakalatnama was not signed by her and the application under Order XXII Rule 4 of the CPC came to be allowed *vide* order dated 19.09.2017. Appearance was again put on 24.01.2018 by Mr A.K. Sharma, Advocate on behalf of the appellant, i.e., the legal heir No.3 of the deceased respondent No.2 in the petition. It is also borne out from the record that when the matter was heard on 10.01.2019, a fresh vakalatnama was filed by D.K. Bhatia Associates on behalf of the present appellant.

10. In view of the fact that two counsels had filed vakalatnama on behalf of the present appellant, it cannot be said that the appellant was unaware of the pendency of the probate proceedings. It appears that she deliberately kept herself away from the proceedings and did not pursue her remedies. Merely because Court notice was ordered to be issued to her *vide* order dated 23.01.2019, by way of abundant caution, would not efface the fact that she was well aware of the pendency of the proceedings and ought to have appeared on the subsequent dates of hearing, i.e., 20.03.2019, 07.05.2019, 11.07.2019, 24.07.2019 and 28.08.2019. There is no averment by the appellant that she was prevented from appearing in the present matter due to any sufficient cause.



11. In view of the above discussion, the impugned judgment dated 19.11.2019 and orders dated 06.09.2018, 28.08.2019, 04.02.2023 and 16.02.2023 do not suffer from any illegality, perversity or incorrect approach adopted on law and facts. Hence, the present appeal is dismissed.

12. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

APRIL 17, 2025/*Sadiq*