2025:DHC:7190

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

\+ **TEST.CAS. 29/2024 & I.A. 10003/2024**

Date of Decision**: 13.08.2025**

IN THE MATTER OF:

AMITABH NANGIA .....Petitioner

Through: Mr. B. K. Mishra, Adv.

versus

THE STATE NCT OF DELHI & ORS. .....Respondents

Through: Mr. Atul Batra and Mr. Kundan Kumar Mishra, Advs. for R-2 & 3.
Mr. Manish Srivastava, Mr. Hardik Vashisht, Mr. Moksh Arora and Mr. Santosh Ramdurg, Advs. for R-4.
Mr. Ankur Chhibber and Mr. Nikunj Arora, Advs. for R-5.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

The instant petition under Section 276 of the Indian Succession Act, 1925, is filed seeking the grant of probate with respect of the last Will and testament dated 07.08.2019 executed by Late Col. Surender Mohan (*hereinafter referred to as the "Testator"*).

2. It is stated in the petition that during his lifetime, the Testator, being in a sound and disposing state of mind, and without any coercion, pressure, or

undue influence, executed his last and final Will dated 07.08.2019 (*hereinafter referred to as the "Will")*.

3. The Petitioner was appointed as the executor under the Will. The Will was duly attested by two witnesses, namely, Sh. Narender Kumar Vij (since deceased on 07.05.2021) and Major General S.K. Datt, in the presence of the Testator. The Testator left for the heavenly abode on 09.02.2023 and is survived by the following Class -I legal heirs:

i) **Mrs. Manju Mohan** – Wife of Late Col. Surender Mohan (*respondent No. 2*)

ii) **Mr. Varun Mohan** – Son of Late Col. Surender Mohan (*respondent No. 3*)

iii) **Mrs. Smriti Bansal @ Simmi Bansal** – Daughter of Late Col. Surender Mohan (*respondent No. 4*)

iv) **Mrs. Nidhi Kumar @ Nidhi Mittal** – Daughter of Late Col. Surender (*respondent No. 5*)

4. For the sake of clarity, the Will is extracted as under: -

"*WILL*

This is the last and final will of testament of me, Col Surinder Mohan, son of Late Sh Ram Dev resident of B 5/110 safdarjang Enclave, New Delhi 10029, made by me on this 7th day of Aug 2019 of my own free will and volition and without any fear, pressure or coercion of any type and shallsupersede and cancel all my previous will(s) or codicils if any thereto, made by me.I am happily married. I and my wife Manju are living together. I have two daughters, Nidhi and Simmi, who are also happily married. I have one son Varun, who is married and settled in the USA.I own various moveable and immoveable properties. I hereby bequeath that upon my demise the various moveable and immoveable properties shall devolve as under;

Moveable properties All my accounts/ deposits of various types savings accounts, FDR's, deposits under sec 80 C of the IT Act either with Mutual Fund companies or banks, debentures, shares, NSS or other *deposits in Post Office, National savings certificates, deposits in monthly income schemes of Post office, recurring deposits in banks or post office, investments in Mutual Funds under various types of schemes. Infrastructure bonds etc, shall upon my demise devolve upon my wife Manju who shall then liquidate Rs 2 crores worth of moveable assets from the above and give Rs 1 crore each to our daughters Nidhi Mittal and Simmi Bansal. This will be done within 3 months even if the instruments/FDs have to be closed/ encashed before maturity. Remaining amount from the investments shall be converted into 3 equal-banks Fixed deposits in thesame time frame of 3 months of my demise as under:1. In the joint names of my wife Manju and our daughter Nidhi Mittal.2. In the joint names of my wife Manju and our second daughter Simmi Bansal.3. In the sole name of my wife Manju. The Fixed deposits in the joint names of my wife and two daughters shall be payable to either or survivor. The interest accrued or generated monthly /quarterly from the three FDs shall be for the sole benefit of my wife Manju as long as she is alive. Subsequent to her demise the joint Fixed deposits shall automatically devolve to our two daughters. The third FD which is in the sole name of my wife Manju is to take care of her personal and unforeseen needs. She may use it the way she deems fit during her life time and is free to will this amount to whomsoever she desires.*

Immoveable properties I own a residential floor and basement in property situated in B5/110 safdarjang enclave, New Delhi where I am residing with my wife Manju. I hereby bequeath that upon my demise, these residential premises owned by me shall devolve as hereunder: My wife Smt Manju Mohan would have a life time interest to live in these premises as per her wishes with full right to ensure that she lives in the same as per her perception of her dignity without any interference from anybody in any matter what so ever. However upon her demise and compliance of the conditions of my will wrt movable property as mentioned above this property B5/110 safdarjang Enclave shall devolve upon my son Varun. It is made clear that during her life time my wife, Manju Mohan, will not have the right to create any lien or encumbrance on this property rior she will have any right of disposal thereof and shall only have a right of free and dignified living therein during her life time as per her perception of dignity without any interference from anybody in any manner what so ever. However in case, my wife predeceases me then all my immovable properties shall in that eventuality remain with me and upon my demise devolve upon my son Varun subject to fulfilment of conditions wrt movable properties.

Executor: I appoint Mr Amitabh Nangia residing at C 15/12 DLF Phase 1 Gurgaon 122002, as the Executor of this WILL, to do all such acts and things as may be necessary to enable easy transmission of my estate. This will has been prepared under my instructions and I have gone through the contents of the same I find the contents of this will to be in *conformity of my instructions and I am satisfied that itreflects and contains complete and correct expression of my will.\J In witness whereof, I the testator named above have set and subscribed my hands unto this last will and testament on the day date and year first above mentioned in the presence of witness whose signatures appears hereunder and who have witnessed the same at my request."*

5. A perusal of the Will, indicates that the movable and immovable properties of the Testator were bequeathed in favour of respondents No. 2 to 5, who are the beneficiaries. The details of such properties are set out in Annexure A of the Valuation Report.

6. The Will stipulates that all accounts, deposits, mutual funds investments, shares, debentures, bonds, NSS, post office deposits, and other movable assets shall devolve upon Respondent No. 2, who is to liquidate assets worth INR 2 crores and distribute INR 1 crore each to Respondents No. 4 and 5 within three months of the Testator's demise.

7. The balance from the above investments is to be converted into three equal fixed deposits within three months of the demise of the Testator, as follows: (i) Jointly in the names of Respondent No. 2 and Respondent No. 5; (ii) Jointly in the names of Respondent No. 2 and Respondent No. 4; and (iii) In the sole name of Respondent No. 2.

8. The interest accruing on the aforesaid deposits has been stated to be for the sole benefit of Respondent No. 2 during her lifetime. Upon her demise, the joint fixed deposits shall devolve upon Respondents No. 4 and 5. The fixed deposit in the sole name of Respondent No. 2 has been stated to be utilized by her as she deems fit.

9. The immoveable property, namely, the ground floor and basement of property bearing No. B5/110, Safdarjung Enclave, New Delhi, is given to Respondent No. 2 with life interest, with absolute interest to devolve upon Respondent No. 3 after her demise and subject to compliance with the conditions regarding movable properties.

10. The Will declares Respondents No. 2 to 4, i.e., wife, son, and two daughters of the Testator, as the only beneficiaries and universal legatees.

11. At this stage, it would be noted that *vide* gift deed dated 12.04.2022, the Testator gifted the property bearing B5/110, Safdarjung Enclave, New Delhi in favour of respondent no. 3 herein. In turn, respondent No.3 has executed the sale deed dated 07.12.2022 in favour of Mr. Sanjay Bhandari. It is therefore noted that the said property shall not be subject to the instant order.

12. *Vide* order dated 07.08.2025, the concerned Joint registrar records the no-objection given by respondents no.2 to 5. The order dated 07.08.205 reads as under: -

> *"1. Learned counsel for respondents no. 2, 3 & 5 already raised no objection to the petition.*
> *2. Learned counsel for respondent no. 4 also raised no objection to the petition and submitted that he had already filed affidavit in this regard.*
> *3. At joint request, list the matter before the Hon'ble Court for further directions on 13.08.2025."*

13. Section 276 of the Succession Act, reads as under:-

> "*276. Petition for probate.—*
> *(1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned*

in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—
(a) the time of the testator's death,
(b) that the writing annexed is his last Will and testament,
(c) that it was duly executed,
(d) the amount of assets which are likely to come to the petitioner's hands, and
(e) when the application is for probate, that the petitioner is the executor named in the Will.
(2) In addition to these particulars, the petition shall further state,—
(a)when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
(b)when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.
(3)Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate."

14. In the case of ***Ishwardeo Narain Singh v. Kamta Devi***[1], the Supreme Court delineated critical prerequisites for granting probate. First, the onus probandi rests on the petitioner to substantiate the authenticity of the Will and voluntary execution by the testator. Second, probate proceedings, being *in rem*, are binding upon not only the litigants but also the public at large, coupled with a presumption of validity. Third, a will that appears regular and is duly attested engenders a presumption of validity, which holds unless contradicted by dubious circumstances. The Courts are tasked with ensuring the genuineness of the Will and dispelling any suspicions. Although technical evidentiary rules are applicable, the paramount criterion is the assurance of the Court with respect to the document's veracity.

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[1] AIR 1954 SC 280

15. The requirements enumerated in ***Ishwardeo Narain Singh*** stand fulfilled in the present case, as has been discussed in the foregoing paragraphs.

16. It is further imperative to observe that a sine qua non for the grant of probate is that the Will in question must constitute the ultimate testament of the testator. Pursuant to clause (b) of Section 276 of the Succession Act, the designation "last Will and testament" pertains to a document that remains extant postmortem, detailing the apportionment of immovable assets and the designation of beneficiaries.

17. On a brief scrutiny of the Will and the surrounding circumstances for its execution, there does not seem to be any other Will after the Will dated 07.08.2019. The same is, thus, found to be last Will and testament in terms of the requirement of Section 276 of the Succession Act.

18. The Court, thus, finds that the said Will is a legally executed document, and on the basis thereof, the petitioner is entitled to the probate of the Will dated 07.08.2019, subject to exceptions as noted in paragraph no. 11 hereinabove.

19. The petitioners are directed to file the requisite Court fee with the registry. The petitioners are further exempted from furnishing any security bond.

20. With the aforesaid directions, the instant petition stands allowed. The application(s), if any, stands disposed of.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 13, 2025/p/mj