



2025:DHC:3042



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

+ **TEST.CAS. 21/2018**

Date of Decision: **17.04.2025**

IN THE MATTER OF:

SH. ASHOK KUMAR PASHINE
S/O LATE SATYA NIRANJAN PASHINE
R/O HOUSE NO. K-10, GROUND FLOOR,
SOUTH EX PART I, NEW DELHI-110049

.....PETITIONER NO.1

DR. PUSHPA GUPTA
W/O DR JYOTISH CHANDRA GUPTA
D/O LATE SATYA NIRANJAN PASHINE
R/O D-36 (FLAT NO 4, GROUND FLOOR),
SOUTH EXTENSION PART-II, NEW DELHI-110049

.....PETITIONER NO.2

SMT. RAJSHREE AGRAWAL
W/O SH. RAKESH AGRAWAL
D/O LAT SATYA NIRANJAN PASHINE
R/O HOUSE NO. 273, SECTOR-14,
GURUGRAM, HARYANA

.....PETITIONER NO.3

LATE JAYSHREE SHARMA
W/O LATE SUNIL SHARMA
D/O LATE SA1YA NIRANJAN PASHINE

THROUGH HER LEGAL HEIRS:

(I) SH. ANKUSH SHARMA
(II) SH. ANISH SHARMA
BOTH R/O 131, FIRST FLOOR,
KAILASH PLILLS, NEW DELHI-110065

.....PETITIONER NO.4

Through: Mr.F.K. Jha and Mr.Gaurav Jha,
Advocates.



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Versus

STATE OF NCT OF DELHI
THROUGH ITS CHIEF SECRETARY
DELHI SECRETARIAT, DELHI

.....RESPONDENT NO.1

SH. ANIL KUMAR PASHINE
S/O LATE SATYA NIRANJAN PASHINE
R/O K-10, PART OF GROUND FLOOR,
SOUTH EX PART 1, NEW DELHI-110049

.....RESPONDENT NO.2

SMT. INDU PASHINE
W/O LATE SATYA NIRANJAN
R/O K-10, NDSE, PART-1,
NEW DELHI-110049

.....RESPONDENT NO.3

Through: Ms.Avni Singh, Advocate for R-
GNCTD.
Mr.Amar Kumar, Advocate.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGEMENT

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

The instant petition under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as "Act of 1925") read with Section 300 of the Act of 1925 has been filed seeking probate of the Will dated 23.04.1982 executed by late Shri Satya Niranjn Pashine (hereinafter referred to as the 'testator').

2. The facts of the case would indicate that the testator was the father of



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petitioners. Respondent nos.2 and 3 are the son and wife of the testator, respectively. Respondent no.3/wife was named as the primary executor under the Will and petitioner nos.1 and 2 were other executors, in case the primary executor fails in her duty.

3. The aforesaid Will was registered on 29.10.1984 before the officer of Sub-Registrar, New Delhi. There were various movable and immovable properties, which were the subject matter of the Will, however, in the instant case, the dispute is confined to the immovable property bearing House No.K-10, South Extension-I, Part-1, New Delhi.

4. As per the case set up by the petitioners under the said Will, a life interest was created in favour of respondent no.3, while an absolute bequest was made in favour of the petitioners and respondent no.2 (youngest son of the testator).

5. During the year 2016-17, disputes arose *inter se* the petitioners and respondent no.2 and 3. Therefore, in order to obtain probate on the basis of the Will, the petitioners have filed the instant petition.

6. During the pendency of the instant proceedings, on 28.06.2018, petitioner no.1 has filed an affidavit stating therein that no attesting witness of the Will is alive. The aforesaid affidavit remains uncontroverted. The citations in the newspapers "The Statesman" and "Navbharat Times" were also published on 28.08.2018.

7. On 10.10.2018, respondent no.3 filed an affidavit of Admission/Denial, explicitly admitting the Will dated 23.04.1982. Even respondent



no.2 *vide* his reply dated 27.09.2018 has admitted the execution of the Will.

8. It is the case of the petitioners that respondent no.2 had also admitted the Will in previous proceedings between the parties before the Court of Ld. Civil Judge, South-East, Saket Courts, New Delhi.

9. After completion of pleadings, the Court *vide* order dated 23.04.2019 has framed the following issues:-

“1. Whether the document dated 23rd April, 1982 is the validly executed last Will of late Sh.Satya Niranja Pashine? OPP

2. Relief.”

10. Mr.Amar Kumar, learned counsel for the respondents submits that the present petition is premature and not maintainable. It is contended that during the lifetime of the principal executor, the petitioners have no *locus standi* to institute the present proceedings. In support of this submission, reliance is placed upon the judgment of the High Court of Judicature at Patna in **Radha Piyari Devi v. Suman Singh**¹, wherein it was held that a beneficiary would have no *locus standi* to seek Probate or Letters of Administration during the lifetime of the executor.

11. *Per contra*, Mr. F.K. Jha learned counsel for the petitioners submits that the Will stands admitted by the respondents and, therefore, no further objection regarding the maintainability of the proceedings can be sustained. It is contended that the argument of prematurity or lack of *locus standi* raised on behalf of the respondents is misconceived and untenable. Learned counsel further submits that the petitioners are not merely beneficiaries but



also alternate executors under the Will, and hence, they possess the necessary locus to institute the present proceedings. It is argued that if the principal executor, i.e., respondent no. 3, for any reason, fails or chooses not to initiate proceedings for obtaining Probate, the alternate executors are entitled in law to seek such Probate.

12. Learned counsel for the petitioners further submits that the signatures of the Registering Officer and the identifying witnesses affixed to the registration endorsement are sufficient attestation within the meaning of the Act of 1925. Reliance is placed on the decision of the Supreme Court in ***Pentakota Satyanarayana and others v. Pentakota Seetharatnam and others***².

13. Additionally, learned counsel places reliance upon the judgment of the High Court of Madras in ***Marathal (Died) and Another v. Kanniammal (Died) and others***³, to contend that the presumption under Section 90 of the Indian Evidence Act, 1872 would apply to the execution and attestation of the Will, given the passage of time since its execution.

14. It is further submitted that the right of the petitioners to approach the Court for recognition of their testamentary rights constitutes a continuing cause of action. Such a right survives so long as the object of the trust remains or any part thereof created by the Will is yet to be executed. In

¹ 2017 SCC OnLine Pat 1160

² (2005) 8 SCC 67.

³ 2024 SCC OnLine Mad 5153.



support of this proposition, reliance is placed on the decision of the Supreme Court in ***Kunvarjeet Singh Khandpur vs. Kirandeep Kaur and others***⁴.

15. I have heard the submissions made by learned counsel for both parties and also perused the record.

16. At the outset, it is noted that while granting a Probate, the Court is not deciding the disputes relating to the title. Reference can be made to the decision of the Supreme Court in the case of ***Elizabeth Antony vs. Michel Charles John Chown Lenger***⁵.

17. The Supreme Court in the case of ***Delhi Development Authority vs. Vijaya C. Gurshaney (Mrs) and Another***⁶ has also held that a testamentary Court, whilst granting Probate or Letter of Administration, does not even consider, particularly in uncontested matters, the motive behind the execution of a testamentary instrument. A testamentary Court is only concerned with finding out whether or not the testator executed the testamentary instrument out of his free will. It is settled law that the grant of probate or letters of administration does not confer title to property. They merely enable the administration of the estate of the deceased. The relevant extracts of the said decision read as under:-

“8. ... It is settled law that a testamentary court, whilst granting probate or letters of administration does not even consider particularly in uncontested matters, the motive behind execution of a testamentary instrument. A testamentary court is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will. It is settled law that the grant of a probate or letters of administration does not confer title to

⁴ (2008) 8 SCC 463.

⁵ (1990) 3 SCC 333.

⁶ (2003) 7 SCC 301



property. They merely enable administration of the estate of the deceased. Thus, it is always open to a person to dispute title even though probate or letters of administration have been granted.”

18. Furthermore, the Supreme Court in the case of **Jaswant Kaur v. Amrit Kaur**⁷, has considered the scope of the testamentary Court’s ambit in dealing with the probate case. The relevant extracts of the said decision read as under:-

“10. There is a long line of decisions bearing on the nature and standard of evidence required to prove a will. Those decisions have been reviewed in an elaborate judgment of this Court in R. Venkatachala Iyengar v. B.N. Thimmajamma [AIR 1959 SC 443 : 1959 Supp 1 SCR 426] . The Court, speaking through Gajendragadkar, J., laid down in that case the following propositions :

“1. Stated generally, a will has to be proved like any other document, the test to be applied being the usual test of the satisfaction of the prudent mind in such matters. As in the case of proof of other documents, so in the case of proof of wills, one cannot insist on proof with mathematical certainty.

2. Since Section 63 of the Succession Act requires a will to be attested, it cannot be used as evidence until, as required by Section 68 of the Evidence Act, one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the court and capable of giving evidence.

3. Unlike other documents, the will speaks from the death of the testator and therefore the maker of the will is never available for deposing as to the circumstances in which the will came to be executed. This aspect introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last will and testament of the testator. Normally, the onus which lies on the propounder can be taken to be discharged on proof of the essential facts which go into the making of the will.

4. Cases in which the execution of the will is surrounded by suspicious circumstances stand on a different footing. A shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making

⁷ (1977) 1 SCC 369



of the will under which he receives a substantial benefit and such other circumstances raise suspicion about the execution of the will. That suspicion cannot be removed by the mere assertion of the propounder that the will bears the signature of the testator or that the testator was in a sound and disposing state of mind and memory at the time when the will was made, or that those like the wife and children of the testator who would normally receive their due share in his estate were disinherited because the testator might have had his own reasons for excluding them. The presence of suspicious circumstances makes the initial onus heavier and therefore, in cases where the circumstances attendant upon the execution of the will excite the suspicion of the court, the propounder must remove all legitimate suspicions before the document can be accepted as the last will of the testator.

5. It is in connection with wills, the execution of which is surrounded by suspicious circumstances, that the test of satisfaction of the judicial conscience has been evolved. That test emphasises that in determining the question as to whether an instrument produced before the court is the last will of the testator, the court is called upon to decide a solemn question and by reason of suspicious circumstances the court has to be satisfied fully that the will has been validly executed by the testator.

6. If a caveator alleges fraud, undue influence, coercion etc. in regard to the execution of the will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the will may raise a doubt as to whether the testator was acting of his own free will. And then it is a part of the initial onus of the propounder to remove all reasonable doubts in the matter.”

19. Upon a comprehensive consideration of the judicial pronouncements noted hereinabove, it emerges without ambiguity that the jurisdiction exercised by a testamentary Court in a probate proceeding is confined to examining the genuineness and due execution of the Will; it does not extend to adjudicating the disputed questions of title or ownership. A Will, like any other document, must be proved in accordance with the standard evidentiary principles, the touchstone being the judicial satisfaction of a prudent mind. The initial burden lies on the propounder of the Will to establish the



essential elements underlying its valid execution, namely, that the testator had the requisite testamentary capacity, the Will was executed voluntarily, and attested in the manner prescribed by law. Once these foundational facts are established, the onus shifts to the caveator who alleges vitiating factors such as fraud, coercion, undue influence, or lack of free will. However, even in the absence of specific allegations, the surrounding circumstances attendant upon the execution of the Will may give rise to legitimate suspicion, warranting closer judicial scrutiny as to whether the testator acted voluntarily and with a sound disposing mind.

20. It is under the aforesaid background, if the facts of the present case are appreciated in the right perspective, there is no quarrel over the veracity of the Will, as both parties have heavily and copiously relied upon the recitals of the Will. The petitioners on 27.09.2019 filed their respective evidence by way of affidavit. On 03.03.2020, Shri Naveen Gandas, Record Clerk from the Archives Office, Mehrauli, recorded his statement as PW-3, whereby, the copy of the Will was preserved. The said witness has not been cross-examined by any of the respondents.

21. The petitioner nos.1 and 2 examined themselves and were also cross-examined by the respondent nos.2 and 3. The respondent no.3 did not adduce any evidence.

22. It be also noted that in the instant case, a specific affidavit was filed by one of the petitioners stating therein that none of the attesting witnesses is alive. In view thereof, the Court will have to consider the other attending circumstances.



23. Therefore, the evidence affidavits of PW-1 and PW-2 are of crucial importance, which clearly reaffirm the registration of the Will dated 23.04.1982. For the sake of convenience, paragraph no. 3 of evidence affidavit of PW1 is reproduced as under:-

“Statement of PW1

.....

3. That on 23.04.1982, the testator, namely Satya Niranjana Pashine, had executed a Will and the same was duly registered on 29.10.1984 in the Office of Sub-Registrar, New Delhi. The said Will provides to the bequeathal of the movable as well as immovable properties as contained therein. The said Will stands executed as per the law, and also the same has been executed in the presence of the witnesses named therein. Original Will dated 23.04.1982 and Site Plan are Ex.P-3/R-3(Colly-Part of Will).”

24. A perusal of the evidence and material available on record would clearly indicate that there is no doubt over the genuineness of the Will dated 23.04.1982. Even during the course of arguments, learned counsel for the respondents does not controvert the fact of the execution of the Will.

25. Furthermore, if the evidence of PW-3, namely Shri Niranjana Das, Record Clerk from the Archives Office, Mehrauli, is perused, it would clearly illustrate that the Will is the registered document as he testified that a record of the concerned Will exists and the Will produced by the petitioner and the one mentioned in the record book of the Registrar is one and the same. The relevant extracts of his evidence read as under:-

“I have brought the record of original Will dated 23.04.1982 executed by Sh. Satya Niranjana s/o late Sh. Dayaram Pashine r/o House no. K-10, South Extension-I, New Delhi-110049.

The concerned record exists at document no: 3841, book no.3, volume no.293 on pages 38 to 52 dated 29.10.1984.



I have seen the original Will in the court record and the same is compared with the record brought by me and found to be the same. The original Will is exhibited as Ex.PW-3/A.”

26. In view of the aforesaid, since in the present case, there is no allegation of fraud or coercion that the concerned Will is a forged document, moreover, no evidence has been led regarding this aspect, this Court has no hesitation in deciding the Issue no.1 in the affirmative, holding that Will dated 23.04.1982 is the validly executed last Will of the testator. Therefore, the said issue is decided in favour of the petitioners.

27. So far as the objection raised by learned counsel for the respondents that the instant petition is premature is concerned, the Court needs to consider the recitals in the Will in question to adjudicate upon the said issue. Paragraph no.5 of the Will dated 23.04.1982 reads as under:-

“5. This sheer consideration uppermost in my mind of our harmonious and cordial relations of life partnership and conscious of my duties towards my wife Shrimati Indu Pashine to provide for her life, I Appoint (1) Shrimati Indu Pashine my wife to be the sole Executor and Trustee of this my Will and failing her I Appoint my eldest daughter (2) Shrimati (Doctor) Pushpa Gupta, and also failing her, (3) my eldest son Shri Asho Kumar Pashine, in succession to each other the Executor and Trustee. The last Executor and Trustee Shri Ashok Kumar Pashine is authorised to appoint his succession whomsoever, as far as possible from amongst any member from the family group of my five children. The Executor/ Trustee may renounce her/his position due to circumstances beyond her/his control in favour of his next succession by tendering written resignation.”

28. A holistic and purposive reading of the recitals contained in paragraph 5 of the Will dated 23.04.1982 unequivocally reveals that the testator intended to nominate his wife, Smt. Indu Pashine (respondent no.3), as the initial executor and trustee of his estate, conferring upon her a life interest in



the property. However, such construction is not the only plausible inference derivable from the text of the Will. The sequential nature of appointments further reflects the testator's deliberate design to ensure continuity in the administration of his estate. Upon the failure or unwillingness of the wife to act, the Will contemplates the appointment of the eldest daughter, Dr. Pushpa Gupta, and thereafter, in a similar contingency, the eldest son, Shri Ashok Kumar Pashine—the present petitioner—thereby constituting a chain of executorial succession. This layered structure underscores the testator's manifest intent to preserve the fiduciary oversight of the estate within the family.

29. Furthermore, the Will contains an express provision enabling the last appointed executor and trustee, Shri Ashok Kumar Pashine, to nominate a successor, preferably from among his five children or other family members, thereby perpetuating the familial control envisaged by the testator. It is also specifically provided that any executor or trustee, due to circumstances beyond their control, may resign by submitting a written communication, thereby facilitating an orderly transition of responsibilities without occasioning an administrative vacuum.

30. Admittedly, respondent no.3 was designated as the initial executor, but the Will clearly engrafts a contingency-based executorial scheme by which, on her default or omission to act, the eldest daughter and thereafter the eldest son were vested with the power and authority to assume the role of executor and trustee. Consequently, the petitioners, who derive their entitlement under such express provisions, cannot be considered strangers to the testamentary scheme. Their claim for the grant of probate is firmly



rooted in the testator's intent as captured in the Will itself, especially in circumstances where the primary executor has either failed to act or neglected to assert her legal rights within a reasonable time. The petitioners thus have a substantial and legal foundation to seek probate of the Will upon the failure of the primary executor.

31. At this juncture, it is pertinent to refer to Sections 222 and 224 of the Act of 1925, which read as under:-

“222. Probate only to appointed executor.—(1) Probate shall be granted only to an executor appointed by the will. (2) The appointment may be expressed or by necessary implication.

Illustrations

(i) A wills that C be his executor if B will not. B is appointed executor by implication.

(ii) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law C, and adds “but should the within-named C be not living I do constitute and appoint B my whole and sole executrix”. C is appointed executrix by implication.

(iii) A appoints several persons executors of his will and codicils and his nephew residuary legatee, and in another codicil are these words,—“I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils signed of different dates”. The nephew is appointed an executor by implication.

224. Grant of probate to several executors simultaneously or at different times.—When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration

A is an executor of B's will by express appointment and C an executor of it by implication. Probate may be granted to A and C at the same time or to A first and then to C, or to C first and then to A.”

32. A bare perusal of Section 222 would indicate that the probate shall be granted only to the executor appointed by the Will. However, this is not the only implication that can be derived from the bare reading of Section 222, a



perusal of sub-section (2) would signify that the appointment of the executor may be express or even by necessary implication. Moreover, Section 224 further signifies that in a contingency when several executors are appointed in the Will as per the intention of the Testator, the probate may be granted to all of them simultaneously or at different times. The intention of the Legislature further gets strengthened and gives a clear picture by way of an illustration appended to Section 224 of the Act of 1925. By way of illustration, it is clear that if 'A' is an executor of B's Will by express appointment and 'C' an executor of it by implication then in such an eventuality probate may be granted to 'A' and 'C' at the same time or to 'A' first and then to 'C' or to 'C' first and then 'A'.

33. Reference can be made to the decision of *Mithibai v. Canji Kheraj*⁸, wherein the Will reads as *"In case of the death of my Wife Parvatibai, the said affairs and distribution of money mentioned above to be paid to my second wife, Bai Mithibai"* In such a scenario, it has been held that:-

"When a testator appoints an executor and provides that in case of his death another should be substituted, then on the death of the original executor though he has proved the will, the executor so substituted may be admitted to the office, if it appear to have been the testator's intention that the substitution should take place on that event, whether happening in the testator's lifetime or afterwards."

Where a testator by his will names a person to discharge any duties under the will without expressly appointing him executor, the rule is that, unless it can be gathered from the will that the testator intended such person to pay the debts and legacies under the will, such person cannot be held to be the executor."

34. However, in the present case, this is not a scenario as the substitution

⁸ ILR 26 Bom 571 (1902).



of the primary executor is not contingent upon the death of the primary executor rather, the Will in the present case is crystal clear that upon failing the primary executor, the other executor was appointed. Thus, on the fulcrum of Sections 222 and 224 of the Act of 1925, it is crystal clear that when several executors are appointed in the Will as per the intention of the Testator, the probate may be granted to all of them simultaneously or at different times.

35. Furthermore, the decision of the High Court of Judicature at Patna in ***Radha Piyari*** as relied upon by learned counsel for the respondents, deals with the situation where, the petitioners therein were remote legatees having no *locus standi* to file the probate case. It is under those circumstances, that the Court in the aforesaid case held that the petition at the instance of remote legatees was not maintainable. The said case is clearly distinguishable under the facts of the present case as in the present case petitioners are not remote legatees rather named as executors in the Will itself.

36. During the course of arguments, learned counsel for the petitioners fairly states that the right under the Will, which relates to the lifetime interest of respondent no.3 is concerned, remains undisputed. According to him, the probate petition has been filed as the principal executor failed to take timely steps to get the Will probated and to avoid any further legal consequences. He also submits that if such timely steps are not taken, the same would lead to multiple legal consequences.

37. Section 276 of the Act of 1925 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."

38. In the case of ***Ishwardeo Narain Singh v. Kamta Devi***⁹, 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.

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

40. 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 Act of 1925, 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.

41. 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 23.04.1982. The same is, thus, found to be the last Will and testament in terms of the requirement of Section 276 of the Act of 1925.

42. The death certificate, as has been noted hereinabove, is also not disputed. The factum of registration of the Will also stands satisfied.

43. The Court, thus, finds that the said Will is a legally executed document, and on the basis thereto, the petitioner is entitled to the probate of the Will dated 23.04.1982 executed by the testator, late Shri Satya Niranjana Pashine.

44. The petitioner is directed to file the requisite Court fee with the registry and in compliance with the said requirement, let the registry issue

⁹ AIR 1954 SC 280



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the probate along with a copy of the Will which was furnished to the Court. The petitioner is further exempted from furnishing any security bond.

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

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 17, 2025
Nc/@m