
(2021) 11 DEL CK 0159

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 614 Of 2021, Civil Miscellaneous No. 31002 Of 2021

VLS Commodities P. Ltd.

APPELLANT

Vs

Sadhna Mehrotra & Ors

RESPONDENT

Date of Decision : 25-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 32 Rule 12
Delhi High Court (Original Side) Rules, 2018 — Rule 3(d), 3(e)
Indian Succession Act, 1925 — Section 295, 372(3), 373, 387
Hindu Succession Act, 1956 — Section 25

Citation : (2021) 11 DEL CK 0159

Hon'ble Judges : Amit Bansal, J

Bench : Single Bench

Advocate : B.B.Gupta, Madhavi Khare, Achal Gupta, Yashpal Singh

Final Decision : Dismissed

Judgement

Amit Bansal, J

1. The present petition under Article 227 of the Constitution of India impugns two orders dated 27th March, 2021 passed by the Administrative Civil Judge, South-East, Saket Court, New Delhi in Succ. Court No.1554/16, whereby the application filed on behalf of the petitioner Company, inter alia, seeking impleadment in the succession proceedings and permitting the petitioner Company to cross-examine the respondent no.1, PW-1 in the succession proceedings, has been dismissed. Furthermore, the objections filed on behalf of the petitioner Company have also been dismissed.

2. Submissions of the parties were heard on 13th September, 2021 and on 17th November, 2021, when the judgment was reserved.

3. Brief facts leading to the filing of the present petition are set out below:

3.1 Late Sh. Somesh Mehrotra was a director and shareholder in the petitioner Company. He expired on 22nd August, 2015.

3.2 A suit bearing CS(OS) No.65/2018 was filed by the petitioner Company seeking recovery of Rs.1,50,00,000/- along with interest from the estate of late Sh. Somesh Mehrotra, which is pending before this Court.

3.3 The Succession Petition from which the present petition arises was filed on behalf of the respondents No.1 and 2, being the wife and the daughter of late Sh. Somesh Mehrotra respectively on 3rd October, 2015.

3.4 The respondents No.3, 4 and 5 being the father, brother and sister of late Sh. Somesh Mehrotra respectively, were impleaded as respondents in the said Succession Petition.

3.5 The petitioner Company filed an application for impleadment in the Succession Petition, which was dismissed by the Succession Court vide order dated 15th September, 2020.

3.6 The said order was challenged before this Court and this Court vide order dated 24th November, 2020 in CM(M) No.559/2020 gave permission to the petitioner Company to file its objections in the succession proceedings.

3.7 Accordingly, the petitioner Company filed its objections on 18th December, 2020 and also filed an application seeking impleadment in the Succession Petition and sought permission to cross-examine PW-1 and direction to the respondent No.2 to enter appearance in her individual and independent capacity and to file her independent and separate affidavit of evidence.

3.8 The said application and the objections filed on behalf of the petitioner Company were dismissed by the Succession Court vide orders dated 27th March, 2021. Hence, this petition.

4. The application for impleadment filed by the petitioner Company was dismissed by the Succession Court vide the impugned order reasoning/observing that, (i) the application was an abuse of process of law as on an earlier occasion, vide order dated 15th September, 2020, a similar application had already been rejected by the Succession Court; (ii) this Court vide order 24th November, 2020 did not allow the impleadment of the petitioner Company, but only allowed the petitioner Company to file its objections; (iii) there was no question of allowing cross-examination of the respondents No.1 and 2 by the petitioner Company; and (iv) if any direction was to be given in respect of the respondent No.2, being the daughter of late Sh. Somesh Mehrotra and who had become a major during the pendency of the succession proceedings, the same was between the Court and the said respondent No.2 and no application in this regard could be made by the petitioner Company. With the aforesaid observations, the application filed on behalf of the petitioner Company was dismissed with costs of Rs.25,000/- as, in the opinion of the Succession Court, the same was filed only to delay the proceedings.

5. The objections filed on behalf of the petitioner Company were also dismissed by the Succession Court vide impugned order of the same date, by observing/holding that, (i) proceedings for grant of succession certificates were summary in nature and therefore, difficult questions of law and facts cannot be decided in such proceedings; (ii) Section 387 of the Indian Succession Act, 1925 provides that no decision given by the Succession Court shall be held to bar the trial of the same question in any suit or other proceeding between the same parties and any person who receives any debt or securities or interest or dividend on any security is still liable to account to said debt or securities or interest to the person lawfully entitled thereto; (iii) the question whether any loan was taken by late Sh. Somesh Mehrotra from the petitioner Company and whether the same has been repaid or not or whether any gift qua any part shares was made by Sh. Somesh Mehrotra in favour of his father/respondent No.3 or whether any other misuse, dilution or alienation was made by the said deceased or not were all disputed questions of fact, which could not be decided by the Succession Court and were pending adjudication in various law suits pending between the parties; and (iv) in respect of the contention of the petitioner Company that there was a stay on the succession proceedings vide orders dated 24th February, 2020 in FAO (OS) No.209/2019 and FAO (OS) No.217/2019, it was clearly stated in the said orders that arguments in the succession proceedings would continue, but no final orders would be passed till next date of hearing; thus, there was no stay on the adjudication of the objections filed by the petitioner Company.

6. Mr. B.B. Gupta, senior counsel appearing on behalf of the petitioner Company has made the submissions that, (i) the respondents No.3 and 4 had filed objections to the Succession Petition, which were dismissed by the Succession Court vide order dated 2nd January, 2018, however, they had been permitted to cross-examine the respondent No.1; (ii) against the dismissal of the application for impleadment filed on behalf of the petitioner Company, the petitioner Company approached this Court and this Court vide consent order dated 24th November, 2020 permitted the petitioner Company to file objections; (iii) once the petitioner Company was allowed to file objections in terms of the consent order dated 24th November, 2020 passed by this Court, the petitioner Company should have also been allowed to cross-examine the respondents No.1 and 2; (iv) in terms of Section 25 of the Hindu Succession Act, 1956, a person who commits murder or abets the commission of murder, would be disqualified from inheriting the property of the person murdered and in the present case, the respondent No.1 is a suspect in the murder of her husband, late Sh. Somesh Mehrotra; the aforesaid objections have not been taken by any of the other objectors and therefore, it is important that the petitioner Company be allowed to cross-examine the respondent No.1 in respect thereof; (v) the respondent No.2 was a minor when the Succession Petition was filed and subsequently, she attained the age of majority and in terms of Order XXXII Rule 12 of the Code of Civil Procedure, 1908 (CPC), she has failed to elect whether she wishes to pursue the Succession Petition in her independent capacity; therefore, the petitioner

Company should be allowed to cross-examine the respondent No.2 in this regard; (vi) in terms of the orders dated 24th February, 2020 passed by this Court in FAO (OS) No.209/2019 and FAO (OS) No.217/2019, it has been directed that the arguments may continue in the succession proceedings but no final order would be passed; therefore the impugned orders are in violation of the terms of the aforesaid orders; and (vii) the petitioner Company is not seeking to decide any question of title in the succession proceedings and the objections filed by the petitioner Company are not connected with the suit filed by the petitioner Company in any manner.

7. Per contra the counsel appearing on behalf of the respondents No.1 and 2 has contended that, (i) succession proceedings are not adversarial in nature, but are in the nature of an inquiry; in this regard, separate rules have been framed by this Court, namely Rule 3(d) of Part B of Chapter 6 of the Delhi High Court Rules, Volume II titled 'Probate, Administration and Succession Certificates', wherein it is provided that the succession proceedings are in the nature of summary proceedings; (ii) as per Rule 3(e) of the Part B aforesaid, it is stated that persons objecting to an application by another person can be heard without themselves becoming applicants; (iii) the petitioner Company has already filed a recovery suit against the estate of late Sh. Somesh Mehrotra, where to the respondents No.1 and 2 are parties and all questions with regard to the liability of the respondents No.1 and 2 in respect of the loan taken by Sh. Somesh Mehrotra can be adjudicated therein; the aforesaid questions cannot be a subject matter of the Succession Petition; (iv) reliance is placed on Section 372(3) of the Indian Succession Act to contend that in succession proceedings, claims can only be made only in respect of debts due to the deceased and not debts payable to the creditors; (v) Section 25 of the Hindu Succession Act has no applicability in the present case as the respondent No.1 has not been named in the First Information Report (FIR) registered in respect of the death of Sh. Somesh Mehrotra; in any event, whether the respondent No.1 has committed the murder or has abetted the same is a matter to be decided by the competent criminal Courts and the said question cannot be subject matter of the succession proceedings; (vi) the present petition has been filed at the behest of the respondents No.3 to 5 in order to delay the succession proceedings; and (vii) vide order dated 20th November, 2020 passed by this Court, the petitioner Company was only given permission to file objections, however, the right of impleadment was not granted. In the absence of impleadment, there cannot be any right to cross-examine the respondents No.1 and 2.

8. In rejoinder, it is submitted on behalf of the petitioner Company that,

(i) even though the FIR does not name the respondent no.1, she is suspected in the murder/death of late Sh. Somesh Mehrotra; (ii) the Delhi High Court Rules relied upon by the counsel for the respondents No.1 and 2 would only apply to succession petitions filed in High Court and would not apply to succession petitions filed before the District Courts; and (iii) as per Section 295 of the

Indian Succession Act, the provisions of the CPC would apply to succession proceedings.

9. I have considered the rival submissions.

10. It is not in dispute that the petitioner Company had earlier filed an application seeking impleadment in the Succession Petition as well as for allowing the petitioner Company to file objections on the basis of being a creditor of the estate of late Sh. Somesh Mehrotra. The said application was dismissed by the Succession Court vide order dated 15th September, 2020. It may be noted that in the order dated 15th September, 2020 of the Succession Court it was held that the petitioner Company, having admittedly filed a recovery suit for the loan amount against the respondents No.1 and 2 as legal heirs of deceased, was unnecessarily protracting the proceedings of the Succession Petition by seeking impleadment. It was further noted that the petitioner Company, knowing that it cannot seek recovery of any part of the alleged loan amount in the Succession Court, moved an application for impleadment, which was nothing but abuse of process of law.

11. Against the said dismissal, a petition bearing CM(M) 559/2020, was filed by the petitioner Company before this Court. The said petition was disposed of by this Court vide consent order dated 24th November, 2020, whereby the permission was given to the petitioner Company to file objections to the grant of the succession certificate. However, it may be noted that no direction was given for the impleadment of the petitioner Company in the Succession Petition. That being the position, there was no occasion for the petitioner Company to file another application seeking to be impleaded as a party in the Succession Petition. It may also be noted that the submission of the counsel for the petitioner Company appearing in CM(M) 559/2020, as noted in the order dated 24th November, 2020, is to the effect that the petitioner Company was really seeking to file objections to the grant of the succession certificate and it is for that purpose that petitioner Company had sought an impleadment. Therefore, upon the recording of no objection on part of the counsel for the respondents, the only permission granted to the petitioner Company by this Court was to file objections. Therefore, this Court finds no infirmity in the order of the Succession Court not permitting the petitioner Company to be impleaded as a party. The Succession Court in the impugned order has correctly held that the fresh application seeking impleadment was an abuse of process of law as the said prayer had already been rejected by the Succession Court and this Court has not varied the order in that regard.

12. Furthermore, even though the objections filed on behalf of the respondents No.3, and 4 have been dismissed by the Succession Court, in view of the fact that they are parties in the succession proceedings, they have a right to cross-examine the respondents No.1 and 2. In view of the fact that the petitioner Company is not a party to the Succession Petition, this Court is of the view that no absolute right vests in the petitioner Company to cross-examine the

respondents No.1 and 2.

13. This Court is not in agreement with the contention of the counsel for the petitioner Company that the Delhi High Court Rules as aforesaid would not apply to succession proceedings before the District Courts; the principles imbibed therein shall duly apply to the succession proceedings as in the present case. Merit is thus found in the submission of the counsel for the respondents No.1 and 2 that as per Rule 3(e) of the Part B of Chapter 6 of Delhi High Court Rules, Volume II, the petitioner Company's objections to the grant of the succession certificate could have been heard without impleading them as parties to the succession proceedings. As per the Indian Succession Act and the principles enshrined therein, the Succession Court has accordingly considered the objections filed by the petitioner Company and recorded reasons in the impugned order for rejection of the same.

14. As regards the basis for seeking cross-examination of the respondent No.1, it has been contended in the present petition before this Court that the said cross-examination is necessary on account of the respondent No.1 being a suspect in the death of late Sh. Somesh Mehrotra and on account of the bar under Section 25 of the Hindu Succession Act being subsequently applicable to the respondent No.1, preventing her from inheriting the estate of late Sh. Somesh Mehrotra. However, no foundation in respect thereof has been laid down in the objections filed by the petitioner Company. The only averment made in the said objections is that late Sh. Somesh Mehrotra died in mysterious circumstances at his residence, where he was residing with his daughter and wife (the respondents No.1 and 2 respectively), and an FIR bearing No.246/2015 (P.S. Defence Colony) was registered and investigation in regard thereto is going on and being monitored by the Magistrate, Saket Court in CT Case No. 40626/2019. There is no mention of Section 25 of the Hindu Succession Act or the fact that respondent No.1 is one of the suspects in the case in the objections filed by the petitioner Company.

15. Furthermore, it is found that in the said objections, there is no averment taken with regard to the respondent No.2 attaining majority during the pendency of the Succession Petition and not electing to pursue the objection in her own right, even though in the present petition it is stated that the respondent No.2 attained majority in 2019 and the said objections were filed on 18th December, 2020. Therefore, the said ground of objection has been taken for the first time in the present petition. In any event, while dismissing the application for impleadment/directions filed by the petitioner Company vide the impugned order dated 27th March, 2021, the Succession Court has rightly held that the issue of the respondent No.2 attaining majority is between the Succession Court and the respondent No.2 and the petitioner Company, as a stranger, has no locus to raise this issue. Therefore, the same cannot be a ground for cross-examining the respondent No.2.

16. As regard the objections filed by the petitioner Company, the same were filed

on the basis of the petitioner Company being a creditor of the estate of late Sh. Somesh Mehrotra. The petitioner Company has filed a civil suit bearing CS(OS) No.65/2018 for recovery of Rs.1,50,00,000/- from the estate of late Sh. Somesh Mehrotra, and the same suit is pending adjudication. Furthermore, it is noted that in the said suit, an interim application bearing I.A. 10373/2020 has been filed on behalf of the petitioner Company under Order XXXIX Rules 1 and 2 of the CPC seeking an interim restraint on grant of succession certificate in favour of the respondents No.1 and 2, with respect to shares of the petitioner Company held by late Sh. Somesh Mehrotra and alternatively, seeking restraint against respondents No.1 and 2 from exercising any rights as a shareholder of the petitioner Company even if they succeed to the said shares of the petitioner Company, and the said interim application is also pending adjudication.

17. The Supreme Court, in respect of succession proceedings, in *Banarsi Dass Vs. Teeku Dutta (Mrs.) and Anr.* (2005) 4 SCC 449, has held as follows:

"14. The main object of a succession certificate is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of the deceased person. All that the succession certificate purports to do is to facilitate the collection of debts, to regulate the administration of succession and to protect persons who deal with the alleged representatives of the deceased persons. Such a certificate does not give any general power of administration on the estate of the deceased. The grant of a certificate does not establish title of the grantee as the heir of the deceased. A succession certificate is intended as noted above to protect the debtors, which means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate under the Act, or is compelled by a decree of a court to pay it to the person, he is lawfully discharged. The grant of a certificate does not establish a title of the grantee as the heir of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk..."

Furthermore, in *Madhvi Amma Bhawani Amma and Ors. Vs. Kunjikutty Pillai Meenakshi Pillai and Ors.* (2000) 6 SCC 301, the Supreme Court, while interpreting Section 373 of the Indian Succession Act, has held that adjudication to grant or not to grant the succession certificate is in summary proceedings and on a prima facie view of the matter. The Succession Court has therefore, rightly stated that proceedings for grant of succession certificate are summary in nature and it cannot decide intricate and difficult question of law and facts. The Administrative Civil Judge, in the impugned orders, has given cogent findings to the said position of law and applied it squarely to the facts of the case.

18. The findings of this Court in *Sushila Devi Vs. State and Ors.* MANU/DE/3075/2017, relying upon the judgments of the Supreme Court in *Banarsi Dass* (supra) and *Madhvi Amma Bhawani Amma* (supra), may also be reproduced herein as follows:

"7. A Succession Certificate only entitles the grantee thereof to claim and receive the debts and securities of the deceased, giving a full discharge to the persons who may be holding the said debts and securities, so as to relieve them from claim by multiple persons claiming to be the heirs of the deceased. Before granting such Succession Certificate, in a proceeding for grant of Succession Certificate which in any case is summary in nature, the persons holding debts and securities are not required to be impleaded and a perusal of the order dated 14th November, 2014 ordering issuance of Succession Certificate in favour of the petitioner also does not show Axis Bank, Khan Market, New Delhi and New India Insurance Co. Ltd. claimed to be holding the said debts and securities of the deceased to be parties thereto. Merely because an applicant for Succession Certificate has averred in the petition that the debts and securities mentioned in the application are due to the deceased, is no proof of the said debts and securities being due to the deceased and a proceeding for grant of Succession Certificate is not meant for adjudication of the said issues. If the persons who are claimed to be holding the debts and securities of the deceased dispute the claim, the entitlement in law of the grantee of the Succession Certificate is only to make a legal claim against them and not to execute the Succession Certificate or an order granting Succession Certificate."

19. The aforesaid findings of this Court in Sushila Devi (supra) in respect of the persons holding debts and securities not being required to be impleaded in a proceeding for grant of a succession certificate would also be applicable to the case at hand. It may be noted that the objections filed by the petitioner Company to the grant of the succession certificate have been filed in its capacity of an alleged creditor of the estate of late Sh. Somesh Mehrotra. The interest of the petitioner Company is duly safeguarded in terms of Section 387 of the Indian Succession Act, which provides that no findings/decision in succession proceedings shall be a bar on the trial of the same question in any suit or in any other proceedings between the same parties. All issues with regard to the liability of the estate of late Sh. Somesh Mehrotra to the petitioner Company would be considered in the suit filed by the petitioner Company, whereto the respondents No.1 and 2 are parties.

20. In respect of the reliance placed by the petitioner Company on the orders dated 24th February, 2020 passed by this Court in FAO(OS) 209/2019 and FAO(OS) 217/2019, the same is completely misplaced as the only direction given by the Division Bench in the said order was that no final order would be passed in the succession proceedings. No direction was given by the Division Bench that the Succession Court could not decide the objections filed on behalf of the petitioner Company or the impleadment application filed on behalf of the petitioner Company.

21. In my view, there is no infirmity in the impugned orders dated 27th March, 2021 passed by the Succession Court, which warrants interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

Accordingly, the present petition is dismissed.

22. I fully concur with the view of the Succession Court and hold that the petitioner Company has indulged in protracted legal proceedings, including by filing the present petition only to delay the succession proceedings. Accordingly, the present petition is dismissed with costs of Rs.50,000/- to be paid by the petitioner Company to the respondents No.1 and 2.