NEUTRAL CITATION NO:2022/DHC/005814

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

% **Reserved on : 20th December, 2022**
Pronounced on: 23rd December, 2022

\+ TEST.CAS. 59/2022 & I.A. 20925/2022

SWAPNIL GUPTA & ANR. ..... Petitioners

Through: Mr. Samrat Nigam and Mr. Angad Mehta, Advocates

versus

GOVT OF NCT OF DELHI & ORS. ..... Respondents

Through: Ms. Pavitra Kaur, Advocate for R-1
Mr. Tanmaya Mehta, Mr. Rudrajit Ghosh and Mr. Ashu Goyal, Advocates for R-2 and 3
Mr. Rajesh Yadav, Sr. Advocate with Mr. Karan Nagrath, Ms. Ruchika Arora and Ms. Niharika Nagrath, Advocates for R-4

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

I.A. 9861/2022 *(u/S 247 of the Indian Succession Act, 1925)*

1. The present application has been filed by Respondent No. 4, being one of the beneficiaries of the Will under probate, under Section 247 of the Indian Succession Act, 1925 (hereinafter referred to as the **'Act'**) seeking appointment of Administrator of the Estate and assets of Late Ravindra Kumar Singhvi (hereinafter referred to as the '**Testator**'); and

also for issuance of temporary injunction restraining the Petitioner, Respondents No. 2 and 3 from alienating or creating third-party rights *qua* the estate and assets of the testator in the above-mentioned Will dated 5th September 2017.

FACTUAL MATRIX

2. The Testator was married to Respondent No.2 Smt. Amila Singhvi and out of the marriage two children being Respondent No. 3 and Respondent No.4 took birth. A Will was executed by the Testator on 5th September 2017 which was duly registered in the office of Sub-Registrar V(I), New Delhi vide Registration No. 855 in Book No.3 Vol. No.35 on pages 40 to 44. The Will was executed in the presence of two witnesses namely, Mr. Sanjiv Kumar and Mr. Sonu Kumar. Mr. Rishabh Singhvi, son of the Testator being Respondent No.3 and Mrs. Dhriti Goenka, daughter of the Testator being Respondent No.4 are the only beneficiaries under the Will. The Testator left for heavenly abode on 18th May 2021 and subsequent to his death and upon coming to the know about the existence of the alleged Will, the Respondent No.4 vide email dated 28th April 2022 addressed to the Executors, objected to the genuineness of the said Will and sought details of any transactions which have been undertaken under the said Will. The relevant portion of the email dated 28th April 2022 is reproduced below:

> *"My brother Rishabh Singhvi sent to me (on 18th October 2021) by whatsapp a copy of my father, Mr. Ravindra Kumar Singhvi's alleged Will dated 5th September 2017. I have some serious objections to this Will. Without prejudice to my rights and contentions, could you both please furnish me with your list of actions as executors under the said Will.*

> *I believe assets and properties of the Estate are being sold and dealt with behind my back. If you are aware of this, could you please give me details of such transactions. Please also furnish me with the accounts of the Estate if available with you. A copy of the Will is enclosed here for your ready reference."*

3. Having received no response to her email dated 28th April 2022, vide email dated 19th May 2022, Respondent No.4 reiterated her request of the details of transactions and also requested the Executors to refrain from accepting any change in the ownership of the assets and properties without a valid probate of the Will. The relevant portion of the email is reproduced below:

> *"2. Further, as mentioned in my letter, I believe that assets and properties of the Estate are being sold and dealt with behind my back.*
> *3. In the circumstances, and in addition to my requests in my earlier letter, you are also requested to kindly refrain from accepting any change in ownership / transfer /sale of any of the assets and properties from my father's Estate, without a valid probate of the above mentioned alleged Will."*

4. On 28th May 2022, an email was forwarded by the Executors to Respondent No.4 which they received from Respondents No. 2 and 3 by way of which the details of the transactions pertaining to the Estate and assets of the Testator were delineated. Vide email dated 31st May 2022, the Respondent No.4 replied the email dated 28th May 2022, by taking a serious objection to the transactions already entered into by the Respondent No. 4 behind the back of Respondent No.3.

5. Subsequent to this, the captioned probate petition came to be filed on 1st June 2022 by the executors seeking probate of the Will dated 5th

September 2017. In this captioned petition, an I.A. bearing no. 9819/2022 was filed by the Respondent No.4 seeking *status quo* on the Estate and the assets of the Testator and; directions for freezing of voting rights in respect of shareholding of the Testator in various corporate entities. Vide order dated 22nd June 2022 notice was issued in this application and vide order dated 4th July 2022, this application was dismissed as withdrawn. Subsequent to this, the present I.A. came to be filed with the prayers as discussed in the foregoing paragraphs.

SUBMISSIONS

On behalf of the Applicant/Respondent No.4.

6. Mr. Rajesh Yadav, learned senior advocate, appearing in support of the instant application has submitted that the instant Will has been executed under duress, coercion and undue influence. It is submitted that the attesting witnesses being strangers to the Testators have also acted on behalf of the Respondent No.3 as they have been working for monetary gain with him, and at the time of execution of the said Will, Respondent No.3 being the major beneficiary under the Will was present at the Sub Registrar Office. It is further submitted that the Testator was in a feeble state of mind and his physical condition was severely impacted at the time of the execution of the Will. It is also submitted that there are some glaring differences in the Will received from the Sub-Registrar Office and the Will received from the Respondent No.2 in the form of a whatsapp message.

7. It is also argued that the executors, in connivance with Respondents No.2 and 3 have parted with the ownership and possession of many assets of the Testator even though the Respondent No.4 has

taken a strong objection to the genuineness of the Will. It is further submitted that the Executors have turned a blind eye to the illegal conduct of the Respondents No. 2 and 3 who have been maliciously intermeddling with the Estate of the Testator since his death. For elaborating the aboveallegations, Mr. Yadav has submitted that on 21st May 2022, within 72 hours of the death of the Testator, Respondent No.3 has secretively proceeded to transfer the following shareholdings to himself:

International Print-o-Pac Limited

i. 30,99,611 shares held by the deceased in International Print-o-Pac Limited to Rishabh Singhvi.

Sobhagya Capital Options Ltd.

ii. 1,50,100 shares held by the deceased in Sobhagya Capital Options Ltd. to Rishabh Singhvi.

iii. 100 shares of Sobhagya Capital Options Ltd. held by Marketing and Sales to Rishabh Singhvi.

Sobhagya Securities Ltd.

iv. 100 shares held by the deceased in Sobhagya Securities Ltd.

v. 55,000 shares of Sobhagya Securities Ltd. held by Marketing and Sales

IPP India Ltd.

vi. 12,01,139 shares held by the deceased in IPP India Ltd. and;

Rishabh Holdings Ltd.

vii. 69,583 shares held by the deceased in Rishabh Holdings Ltd.

8. Mr. Yadav has also pointed out that again on 30th September 2021 Respondent No.3 has transferred 8,50,000 shares of Sobhagya Capital

Options Ltd. to himself. He has also relied on Section 332 of the Act to contend that the transactions entered into by the Respondent No.3 are in the face of the mandatory provisions of Section 332 which require that the assent of the Executor is required to complete legatee's title to his legacy. It is humbly prayed that the Executor is acting in connivance with the Respondents No.2 and 3 and accordingly, this Court may appoint an administrator *pendente lite*. It is further submitted that the Executor has failed to act in accordance with law and have not taken any steps for the preservation and management of the Estate of the Testator as he has failed to take any action against the Respondent No. 3, who in connivance with Respondent No.2 has unlawfully benefitted from the said Will.

9. It is further submitted that though the Will is alleged to have been executed on 5th September 2017, but the Petitioner was informed about the execution of the said Will only on 18th October 2021 by way of a whatsapp message sent by Respondent No.2 which is five months after the death of the Testator. It is submitted that in the interregnum, every attempt has been made by the Respondents No.2 and 3 in connivance with the Executors to part away with the assets of the Testator thereby, frustrating the rights of the Respondent No.4, as she was never taken into confidence or informed about the alleged transactions which were being made by the Respondent No.3 behind her back.

10. Mr. Yadav has also taken the plea that the Executors have failed to take into consideration Section 337 of the Act inasmuch as the Executor was not empowered to pay or deliver any legacy until the expiration of one year from the death of the Testator. Even otherwise, the learned senior counsel has taken a plea that interest of justice requires that until

and unless the alleged Will is proved and probate as prayed is granted, the entire estate of the Testator should be preserved.

11. It is further submitted that Respondents No.4 shares a relationship of trust and good faith with Respondent No.3 and the same has been grossly abused inasmuch as on the insistence of Respondents No.2 and 3, she had signed some documents, including Board Resolutions, which she now apprehends are being used to the detriment of her interest, as the Respondents No. 2 and 3 are trying to take control of the entire Estate of the Testator.

12. To further substantiate the connivance and ineffectiveness of the Executor learned senior counsel has taken support from the following instances:

i. In November 2021, Respondents No. 2 and 3 sent a deed of partition deed of Kistoormal Ravinder Kumar Singhvi HUF and threatened the Respondent No.4 to sign and send the deed back to them even when by virtue of the said deed, the Respondent No.4 was required to relinquish her rights in the said HUF.

ii. On 17th January 2022, a letter was received by the Respondent No.4 from Respondent No.3 by which it was stated that she will not have any interest in the shareholding of the Testator in Khaitan Chemicals and Fertilizers Limited.

iii. The Respondent No.3 has already unlawfully sold the following properties bearing no. 306, Shiv Smriti Co-operative Society, Annie Besant Road, Worli Mumbai

and B-205, Pocket B, Okhla I, Okhla Industrial Area, New Delhi-110020 belonging to Rishabh Holding Pvt.Ltd., wherein the Testator was holding 44.37% shareholding.

iv. The Respondent No.3 under the garb of the allged Will dated 5th September 2017 has taken over control of various family companies, and the office cum factory premises of IPP India Ltd. situated at C4-C11 Hosiery Complex, Noida has been given out on long term lease, even though it is mortgaged land with the Banks.

v. The Respondents No.2 and 3 are unlawfully attempting to convert Sobhagya Capital Options Limited from Public Company to Private Limited Company and have already approached the Registrar of Companies for such conversion.

13. Learned senior counsel has also relied on the following judicial pronouncements in support if his contentions:

(i)Atula Bala Dasi and Ors. vs. Nirupama Devi and Ors; AIR 1951 CAL 561

> *"8. We may in this connection consider the powers & the jurisdiction of a probate court for safeguarding the interest of all concerned, & particularly to protect the properties which are the subject matter of the testamentary disposition. We have noticed already the provisions contained in Sections 247 & 269 of the Succession Act. Even where the exercise of the powers given to the probate court under Section 247 of the Succession Act, cannot obviate the difficulties or protect the properties, the powers of that court*

are wide enough to issue temporary orders restraining other persons from interfering with the properties which are the subject-matter of testamentary disposition. As indicated in Nirod Barani Debi v. Chamatkarini Debi', 19 C.W.N. 205 though for certain purpose, a probate proceeding is not a suit, in which there is a property in dispute, as contemplated under O. XXXIX, R. 1 of the CPC, the only question in controversy being as to who is to represent the estate of a deceased person, & there being no question of title involved in those proceedings, the court of probate is not thereby wholly incompetent to grant a temporary injunction even in extreme cases; such order of injunction is to be issued only in aid of & in furtherance of the purpose for which a grant is made by a probate court. It is, therefore, open to the probate court not only to appoint an administrator pendente lite, but also to issue an order of injunction, temporary in character, pending the appointment of an administrator pendente lite. If such powers are exercised in probate cases by a probate court, there is no reasonable chance of any property being dissipated, pending the actual grant of a probate or the appointment of an administrator. As observed in 'Nirodbarani v. Chamatkarini (supra)'

> *"In cases where it is brought to the notice of the probate court that a party in possession is about to deal with the movable properties unless injunction is granted, appointment even of an administrator pendente lite may become fruitless. The Court under such circumstances, has ample authority, either under statutory powers or in the exercise of its inherent jurisdiction, to make a temporary order, so as not to defeat the ultimate order which the court is competent to make."*

In our view, the proper application which ought to have been made in the present case was an application for the appointment of an administrator pendente lite, & if necessary, to pray for the issue of a temporary injunction on the decree-holders concerned, pending the appointment of an administrator pendente lite. In a case of this description,

the probate court will not grant the application as a matter of course. The Court of probate would appoint an administrator pendente lite in all cases where the necessity of the appointment is made out. As was observed in 'Brindaban v. Sureshwar", 10 C.L.J. 263 at p. 275, the pendency of different proceedings in different courts is a ground which is to be taken into consideration while dealing with such an application for the appointment of an administrator pendente lite. There is, however, another point which must not be overlooked. It is to be shown that the property which is the subject-matter of the testamentary disposition is going to be affected or dealt with, either in the course of proceedings in another court, or by the personal acts of another individual."

(ii). Inderjeet Singh Amardeep Singh Chadha vs. Davinder Kaur Amardeep Singh Chadha; 2019 SCC OnLine Bom 702.

***"25.** From the phraseology of the aforesaid Section, it becomes evident that it incorporates an enabling provision and invests the testamentary Court with power to appoint an administrator pendente lite. The text of aforesaid section does not, in terms, spell out the circumstances in which an administrator pendente lite may be appointed. Undoubtedly, the testamentary Court, in the backdrop of the facts and circumstances of the given case, ought to be satisfied as to the necessity for appointment of an administrator pendente lite. The object of conferring jurisdiction upon the testamentary Court to appoint an administrator pendente lite is implicit. The object appears to be to ensure that the estate of the testator is effectively managed and securely preserved for the benefit of the persons who are ultimately found to be entitled to succeed to it. This broad object subsumes in its fold a situation wherein it is brought on record that the act and conduct of the person in possession of the estate of the testator are detrimental to the protection and preservation of the estate. The afore-extracted section gives ample discretion to the Court as to the person who can*

be appointed as an administrator pendente lite. There is no apparent prohibition for appointment of a party to the testamentary proceedings as an administrator pendente lite. However, the provision expressly puts two limitations on the powers of the administrator pendente lite: (i) he has no right to distribute the estate; and (ii) he is subject to the immediate control of the Court and shall act under its direction."

(iii) Radhika Bhargava & Ors. vs. Dr. Arjun Sahgal & Ors,; 2017 (3) Mh.L.J. 212.

"*14.* *Axiomatically, this means that a person cannot simultaneously challenge the Will and also seek removal of the executor appointed under it. The two reliefs cannot co-exists. The second assumes that there is an executor validly appointed under the Will, but that his conduct is such as would warrant his removal. He has failed to discharge his duties. This postulates an acceptance of the Will. If the Will itself is challenged, then the appointment of the executor is itself in doubt, and there is no question of his 'removal'; for that 'removal' is coupled with a substitution. If the probate petition, fails, then there is simply no question of executorship. I will accept Ms. Iyer's proposition that an application for removal may be brought at any time, even before the grant of probate, and will return to this briefly a little later. But this only means that the executor, the person nominated in the Will to the position of executorship, is substituted by someone else who will then proceed to prove the Will in its solemn form.*

16. *None of the nine authorities cited by Ms. Iyer deal even remotely with a situation where a party opposed the grant of probate and simultaneously sought removal of the executor. The reliance on Karam Devi v. Radha Kishan, AIR 1935 Lah 406 is wholly misplaced. The question there was whether a civil suit for removal of an executor would lie, or whether there was an 'ouster' of a civil court's jurisdiction. Indeed, there are observations here that seem to me to militate*

against acceptance of what Ms. Iyer commends. For instance, the Karam Devi court clearly said that the right to act as an executor of a Will can be created only by the Will itself. This is perfectly correct, and it leads us directly to the proposition that an application under section 301 for removal of the executor can only be maintained by one who accepts the Will but not the continued executorship of it of the present incumbent."

(iv) Universal Cables Limited & Ors vs Arvind Kumar Newar & Ors.; MANU/WB/0684/2020.

"17. *It is well settled that the position of Administrator pendente lite (APL) in terms of Section 247 of the Succession Act is that the APL represents the estate of the deceased for all purposes, except distribution of the estate. APL shall be subject to the immediate control of the probate Court and shall act under its direction. Except to the limit it is circumscribed by the last limb of Section 247, the control of the Court over the APL and the extent of its authority to issue directions to the APL spreads through the scope and extent of the statutory purpose for which APL can be appointed in terms of Section 247.*

18. *It is fundamental that the eligibility of a share-holder; either if it is only one share or bulk of shares and stocks; the voting rights and the involvement in the company on the strength of the shares would stand regulated, primarily by Sections 47 and 88 of the Companies Act. In Vodafone International Holdings BV v. Union of India reported in (2012) 6 SCC 613, the Hon'ble Supreme Court held, inter alia, that the control and management is a facet of holding of shares and voting rights whose shares represent congeries of rights and controlling interest is an incident of holding majority shares. Their Lordships further held that control of a company vests in the voting powers of its shareholders and*

that the shareholders holding a controlling interest can determine the nature of the business, its management and various other matters touching the affairs of the company. Obviously, therefore, the controlling interest is definitely referable to the shareholdings. In the case in hand, it, truly is part of the estate of PDB. The power of the Probate Court under Section 247 of the Succession Act necessarily includes the power to regulate and permit such shares which are in the domain of commercial activity to be utilised to generate appropriate income and to better utilise the same in the best interest of the affairs of the estate of PDB, which would ultimately reflect on the end beneficiaries, which also includes charitable trust, educational institutions and other such activities."

(v) Amar Deep Singh vs State & Ors.; 2005 (85) DRJ 179.

***"8.** The legal position which has emerged from the above decisions is that a probate Court seized with a petition for grant of probate of Will or Letters of Administration is not a Civil Court within the meaning of the term under the provisions of the Code of Civil Procedure though the proceedings of the Probate Court in relation to the granting of Probate and Letters of Administration is to be regulated, so far as the circumstances of the case may permit, by the Code of Civil Procedure 1908. Once a probate Court is considering a petition for grant of probate or Letters of Administration in respect of a Will, that Court alone is competent to decide on the question of execution and/or validity or otherwise of the Will in question. In such a situation, it is not open to the Civil Court to go into that question. Besides the exercise of jurisdiction by the two Courts/Forums simultaneously may lead to inconsistent and conflicting findings which has to be avoided. The special procedure laid down for grant of a probate and Letters of Administration which is required to be followed by a Probate Court is not required to be followed by the Civil Court while deciding the question of execution or validity of*

a Will. In view of this position, it must be held that the present probate petition though filed latter in point of time than the civil suit filed by the respondents in Panchkula Civil Court is not liable to be stayed. Consequently it must follow that these Civil Court at Panchkula has no jurisdiction to decide the validity of the said Will dated 8.11.1997 propounded by the petitioner in the present petition. All those objections which have been raised by the respondents in regard to the execution and/or validity of the aforesaid Will in the said suit filed by them can very well be looked into by this Court which is competent to decide on that question."

(vi) Sundariya Bai Choudhary vs. Union of India & Ors.; 2008 (2) MPLJ 321.

***"25.** The question now hinges whether the Will Ex. P/1 which is a registered document has been duly proved and its attestation has also been proved in terms of section 63(c) of the Act. Merely because the Will is a registered Will it cannot be said that the same stands proved or it is not required to be proved on account of its registration. There is no law as such. The Will (either registered or unregistered) is required to be proved in accordance with the law. On going through the provision of section 63(c) of the Act, we find that a Will is required to be attested at least by two witnesses or more each of whom has seen the testator signing the Will and they have also signed the Will in presence of the testator. On the touchstone of the criteria laid down under section 63(c) of the Act we are required to examine the statement of the attesting witness in order to ascertain whether the attestation of the Will has been duly proved or not."*

(vi) Dharam Chand vs Mansa Devi; 2010 SCC OnLine HP 1743.

"11. At the very outset I would like to say whether the Will is registered or unregistered, it would have the same value, but it is imperative on its propounder to prove it like a crucial

> *case beyond doubt in accordance with law and repel all the suspicious circumstances. The judgment cited by the learned Counsel for the appellant in* ***Suraj Lamp and Industries Private Limited*** *v.* ***State of Haryana and another, (2009) 7 SCC 363*** *is not applicable in the case of a Will. Further, no presumption can be drawn in favour of the registered Will about its genuineness."*

(vii) Kavita Kanwar vs Pamela Mehta & Ors., (2021) 11 SCC 209

> *"31. In the ultimate analysis, we are satisfied that the will in question is surrounded by various suspicious circumstances which are material in nature and which have gone unexplained. The cumulative effect of these suspicious circumstances is that it cannot be said that the testatrix was aware of and understood the meaning, purport and effect of the contents of the will in question. The appellant, while seeking probate, has not only failed to remove and clear the aforesaid suspicious circumstances but has even contributed her own part in lending more weight to each and every suspicious circumstance. The will in question cannot be probated from any standpoint."*

14. Accordingly, it is humbly prayed that as there is an imminent threat of disposal of assets belonging to the Testator and this is a fit case wherein, this Court should invoke its powers under Section 247 of the Act and appoint an Administrator of the Estate and Assets of the Testator.

On behalf of the Executor/Petitioner No.2.

15. Mr. Angad Mehta, learned counsel appearing for the Executor has denied all the averments taken by Respondent No.4 and submitted that he has taken every effort to stand by the wishes of the Testator. It is submitted that the Petitioner No.2 who is the first cousin of both Respondents No 3 and 4 is a resident of Mumbai and whereas; the bulk of Estate of deceased is situated in New Delhi and he is completely removed from the daily life of the Respondent Nos. 2 and 3 therefore, there can be

no weight in the submission of the Respondent No.4 that she is acting in connivance with Respondent No.2 and 3.

16. It is further submitted that the objections to the captioned probate petition and the instant IA is frivolous and highly misconceived as t even if the contention of the Respondent No.4 is accepted that she got knowledge about the alleged Will on 18th October 2021 but it is an admitted fact that she did not raise any objection until 28th April 2022. It is also submitted that there is no requirement in law or otherwise for the Petitioners to be aware of the Will upon its execution and the executor's responsibility commences only on the death of the Testator.

17. Learned counsel for the Executor has denied the allegation of Respondent No.4 that the existence of the alleged Will was suppressed for another one year from the Petitioner after the demise of the Testator.

18. It is submitted that she was orally informed about the existence of the alleged Will by Respondent No.3 shortly after the death of the Testator. Therefore, it is prayed that the instant application is misconceived and is liable to be dismissed at the very threshold.

<u>On behalf of the Respondents No.2 and 3.</u>

19. Mr. Tanmay Mehta, learned counsel appearing on behalf of the Respondent No.2 and 3 has taken a preliminary objection to the instant application on the ground that an almost identical application was filed by Respondent No.4 bearing I.A. No. 9819/2022 in which no relief was granted to Respondent No.4 and hence, the present application is nothing but a complete misuse of the process of law.

20. Learned counsel has also taken a vehement plea that in the light of the prayers sought by way of the instant application, the appropriate as

well as the legal course would have been to first move an application under Section 301 of the Act seeking removal of the executor, and then only an application could have been moved under Section 247 of the Act seeking appointment of an administrator *pendente lite*. It is therefore, prayed that the instant application is non-maintainable and liable to be dismissed on this sole ground.

21. It is further submitted by the learned counsel that Respondent No.3 has been bequeathed certain assets of the Testator in terms of the Will, and he has dealt with only such assets as has been bequeathed upon him. It is vehemently prayed that the assets of the family companies are not the assets of the Testator, but are the assets of the respective corporate entities, therefore, no remedy can be granted against such assets more so, when the corporate entities are not party to the present proceedings. It is also submitted that neither the deceased's nor the witnesses signatures/handwriting on the Will has been disputed.

22. It is further submitted that the Will contains a clear intention of the Testator qua the appointment of the Petitioners as the Executor and it is a settled law that when either the due registration of the Will or the signatures contained therein are not under challenge, the appointment of Executors ought not to be interfered by the Court as a matter of course. It is further submitted that for the exercise of powers under Section 247 of the Act there must be a *bona fide* dispute regarding the validity of the Will which is not the case of the Respondent No.4 and hence, no case has been made out for the appointment of the administrator.

23. Learned counsel has further stressed on the plea that it is well established that till a dispute is raised on the authenticity of the Will,

there is neither a requirement to neither obtain a probate of the Will nor involve the executor for the exercising of rights which have been bequeathed by way of the Will. For substantiating his contentions, he has argued that the Respondent No.4 claims to have become aware about the existence of the Will on 18th October 2021 but she did not raise any dispute on the same until April 2022, and she has herself received the following benefits bequeathed by the Will post the demise of the Testator.

(i) In terms of serial no. 3(b) of the Will, the Respondent No.4 was transferred the cash deposits held in the SBI bank account No. 32119109452 and the mutual fund deposits by Respondent No.2 on 21st June 2021.

24. Accordingly, it is submitted that she cannot blow hot and cold at the same time. He has further relied upon Section 213(2)(i) of the Act to contend that the bar under Section 213(1) of the Act is not applicable and hence, right as a legatee can be established even without grant of a probate.

25. To rebut the argument of the Respondent No.4 that she was not aware of the existence of the Will until 18th October 2021, learned counsel has submitted that prior to the demise of the Testator, in March 2021, in order to pacify the concerns of Respondent No.4 regarding the unequal division of assets between the Respondent No.3 and herself, the following valuable assets and receivables were transferred to her by the Respondent No.2 and 3 as well as the deceased Testator:

(i) Gift Deed dated 1st March 2021 executed by the Respondent No.2 in favour of Respondent No.4.

(ii) Another Gift Deed dated 1st March 2021 executed by the Respondent No.2 in favour of Respondent No.4.

(iii) Sale of 5000 shares held by Respondent No.3 in IPP Print technologies India Private Limited to Gold Mineral resources Development Private Limited (the only directors of which are Respondent No.4 and her husband).

(iv) Gift Deed dated 10th April 2018 by which she has been gifted 9,950 equity shares held by the Testator in Megna Garments Private Limited.

(v) Another Gift Deed dated 1st March 2021 by which the Respondent No.4 was gifted 50% of the undivided rights of ownership and entitlements of all and every kind in agricultural land bearing Musti lIKhasra No. 1l//20 min (0-90), *12/2* min (0-18) & *11 /2* min (1-07) at Khasra Khatuni No. *68/63* in the revenue estate of Village Ghumanhera, Tehsil Kapashera, New Delhi.

26. It is accordingly submitted that she had complete knowledge of the existence of the said Will and the entire dispute at hand is an afterthought to throttle the Respondents No.2 and 3 to enter into a settlement, and even if her case is accepted that she got to know about the existence of the Will on 18th October 2010, she has failed to immediately raise a dispute so as to necessitate the requirement of probate of the Will despite the fact that the entire family went on vacations together and Respondent No.4 kept on visiting Respondents No.2 and 3.

27. It is submitted that it was the deceased testator's wish that the Respondent No.3 take over the family business after the former's demise, and the Respondent No.3 had accordingly given his entire professional life to the management of the affairs and assets of the various companies set up by the deceased testator. This is evident from the fact that the he has been a director in all major operating as well as asset-holding companies once promoted by the deceased testator or a very long period of time.

28. Learned counsel has further relied on Section 430 of the Companies Act, 2013 to contend that reliefs sought by way of the instant application are exclusively in the domain of the NCLT as it has the power to adjudicate on the issues of title and transfer of shares of a Company and hence, jurisdiction of the civil court is barred. Hence, this court is precluded from granting any relief qua the shares in various corporate entities owned by the parties herein.

29. In the context of the requirements under Section 332 of the Act, learned counsel has submitted that the consent of the Executor was a mere formality, and in any case such assent was clearly established based on the fact that the Respondent No.2 and 3 had informed the Executors about the transactions made in accordance with the present Will, by way of which they stood rectified.

30. Learned counsel has also relied on the following judicial pronouncements in support if his contentions:

31. Accordingly, it is humbly prayed that the instant application is nothing but gross misuse of process of law, being not maintainable as well as devoid of any merit, and is accordingly liable to be dismissed.

(i) Dr. Subhada Mithilesh Anr v. Prabhakar Deolankar & Ors., 2018 (2) MhLJ 211.

> *"24. This Court has then also considered the fact that as of general rule, the Court will respect the person's appointment as executor for it shows that the testator reposed in that person a special confidence. The Court must give full weight to that expression of confidence. In the present case, that "expression of confidence" is seen not once, but twice as it is to be found in the previous Will too, which the Dastane Family seeks to revive by dislodging the present Will. Hence unless gross misconduct, serious mismanagement, misuse or misapplication of the estate are shown, RJ 7222 OF 2015.odt the Court will not readily remove an executor who has been appointed in the probate. It was held that there must be clear evidence that the executor's continuance qua executor is detrimental or injurious to the estate and will frustrate the Will, with the administration of which he is charged in law and by the testamentary writing. Minor lapses, errors of judgments or less than perfect handling of matters is not sufficient reason to substitute the testator's expression of confidence.*
>
> *27. Moreover, Administrator pendente lite can be appointed only when there is no-one to look after the property for its administration pending any suit. Here in the case already the Executor is appointed in the Will and this Court has refused to revoke his appointment, and it is held that he is discharging his duties properly and there is no substance in the allegations made against him by the petitioners. In such circumstances, it has to be held that the challenge made to the order passed by the trial Court in this writ petition even in the light of this subsequent order passed by this Court, has become infructuous."*

(ii) Ajay Malhotra v. State, (2019) 260 DLT 488.

> ***"16.*** *The court would also like to record that notwithstanding the fact that the question of title is not involved in testamentary proceedings, the Court is not*

wholly incompetent to grant a temporary injunction in extreme cases. Such order of injunction is issued in aid of and in furtherance of the purpose for which a grant is made by a probate Court. Section 247 of the Indian Succession Act, gives the Court such power. The said provision reads as under:

"247. Administration ***pendente lite****.-Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction."*

17. *The reading of the aforesaid provision clearly shows that it is therefore open for the probate Court not only to appoint an administrator pendent lite, but also to issue an order of temporary injunction, pending the appointment of an administrator pendent lite. However, such orders are passed, when an application is made for the appointment of administrator pendent lite. The probate court will not grant injunction as a matter of course. The Court would have to examine whether there is a necessity for appointment of an administrator pendent lite. Such is not the case before the Court in the present case."*

(iii) Shernaz Farouq Lawyer v. Manek Dara Parsi, (2015) 2 MhLJ 917.

"61. *This Court in case of Pandurang Shyamrao Laud (supra) has held that all allegations pertaining to the execution of Will and counter-allegations will have to be gone into at the hearing of the testamentary suit and any finding and/or observation of the Court at the stage of considering application for appointment of Court Receiver or administrator by the parties in respect of their contentions at the hearing. It is held that before granting*

administration pendente lite, the Court has to be satisfied in the first place that there is a bona fide suit pending touching the validity of the Will of the deceased. It is held that discretion to appoint an administrator has to be exercised judicially and not arbitrarily. Court has to be satisfied as to the necessity of such an administration and as to the fitness of the proposed administration and where it is just and proper under the circumstances of the case to appoint a administrator before subjecting the estate to the cost of such administration. Such an appointment cannot be claimed as a right merely because the proceedings are contested, but whenever there is bona fide dispute and a case of necessity has been made out, the Court in its discretion generally makes the grant.

68. *Though both the parties have addressed this Court at great length in support of their submissions that the Wills propounded by either party is fraudulent and fabricated and is vague and in support of such allegations invited my attention to several documents and pleadings forming part of the record in this notice of motion and also testamentary petitions and contempt petition, in my view, this Court cannot go into such issues at this stage and the same can be decided after recording evidence at the stage of trial. I do not propose to deal with any of these allegations and/or counter-allegations made by either party regarding allegations of fraud, fabrication and forgery at this stage which would prejudice either party in respect of their rival contentions at the time of hearing."*

(iv) Jeyrani v. Murugurajan, CRP(MD) No 1052/2021 (Mad HC)

"3. Pending Probate Original Petition, the petitioner has filed a petition in I.A.No.115 of 2019 seeking orders for appointing an "administrator pendent lite" till the disposal of the original petition to administer the schedule mentioned properties and the learned trial Judge, after enquiry, has passed the impugned order dismissing the said petition.

4. The learned trial Judge by observing that the genuineness of the Will can be decided only on enquiry in the main OP, that the Appointment of an Administrator pendente lite is one among the harshest remedies, which cannot be granted merely on saying that the income from the property is being drained off and that the appointment of the administrator would infringe the legitimate right of the respondents 1 and 2, has come to the decision that the petitioner is not entitled to get the appointment of administrator pendente lite and dismissed the petition."

(v) Fauzia Sultana v. State, 2022 SCCOnline Del 3583.

***"53.** In fact, I find that the Division Bench of the Bombay High Court clearly held that the effect of Sub-Section (2) of Section 269 of the Indian Succession Act, 1925, is to preclude exercise of power in case of one of the excepted categories. It went on to hold that it would not be permissible, in the face of the specific provision of sub-section (2) of Section 269, to read into the provisions of Sections 266 and 268 of the Indian Succession Act, 1925, a general power to grant interlocutory relief, even prior to the grant of probate in respect of the property which is alleged to form part of the estate of the deceased. In the case in hand, the deceased being a Muhammadan, the bar under Section 269(2) shall come into play.*

***54.** Suffice to state that the Coordinate Bench of this Court in Ajay Malhotra (supra), has clearly held by referring to the judgment of Shri Kulbir Singh (supra), that the latter judgment is distinguishable, as Section 269(2) of the Indian Succession Act, 1925, was not brought to the notice of this Court in the said judgment."*

(vi) Santosh Dutta v. Surrender Krishan Bali, 2013 SCCOnline Del 4326.

"30. It is not unusual to find more than one date in a document submitted to a Sub-Registrar for registration.

Therefore, on the document that is registered one is likely to find (a) the date of its execution (b) the date of it being presented for registration in the office of the Sub-Registrar (c) the date when it is returned to the applicant after registration. In the present case, the Court is satisfied that Shri B.K. Bali did in fact execute the Will on 18th April 1988; that it was presented for registration on 25th April 1988 and that the Will was registered and the registered Will was returned on 4th May 1988.

31. The mere fact that Shri B.K. Bali was not physically able to come to the office of the Sub Registrar cannot lead to the inference that when signing the Will he was not in a sound state of mind. Since it is the Plaintiff who has raised a challenge to the Will it is for the Plaintiff to demonstrate that the testator was not in a sound state of mind. The Plaintiff has not discharged that burden. Further, the mere discrepancy in the extent of the suit property as described in the Will is not sufficient to doubt the genuineness of the Will.

32. The Plaintiff and Defendants 1 and 2 have not been able to demonstrate before the Court that there are any suspicious circumstances surrounding the Will of late Shri B.K. Bali so as to doubt its genuineness. Issue No. 1 answered in favour of Defendant No. 1 and against the 1 and Defendants 2 and 3 by holding that late Shri B.K. Bali executed a legal and valid Will dated 18th April 1988.

(vii) Sanjay Roy v. Sandeep Soni, 2022 SCCOnline Del 1525.

***"32.** In the three-Judge decision reported as Ramti Devi (Smt.) v. Union of India, (1995) 1 SCC 198 the Apex Court held as follows:*

"Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred."

33. *It is trite law that no amount of evidence or argument in the absence of pleadings can be gone into by the Court. In Trojan & Co. Ltd. v. Rm. N.N. Nagappa Chettiar, AIR 1953 SC 235, the Supreme Court referred to the Privy Council decision in Mahant Govind Rao v. Sita Ram Kesho, (1897-98) 25 IA 195 (PC) and held that decisions cannot be founded on grounds outside the pleadings and what has to be considered or granted is the case pleaded. It was also held that without amendment of the pleading in light of facts disclosed or discovered subsequently, the Court would not be entitled to modify or alter the relief claimed. These rulings were followed in Ram Kumar Barnwal v. Ram Lakhan (dead), (2007) 5 SCC 660.*

34. *Thus, in the absence of any challenge to the registered Conveyance Deed in favour of the plaintiff, ever raised by the appellant in his pleadings or otherwise, it conferred absolute ownership rights in favour of Smt. Kalyani Roy, which is beyond challenge.*

35. *There is another aspect of the matter. Under Section 3 of the Transfer of Property Act, a person is said to have "notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it. The first explanation to Section 3 reads as follows:*

"Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose subdistrict any part of the property which is being acquired, or of the

property wherein a share or interest is being acquired, is situated :]"

36. *In Dattatreya Shanker Mote v. Anand Chintaman Datar, (1974) 2 SCC 799 and followed in Bina Murlidhar Hemdev v. Kanhaiyalal Lokram Hemdev, (1999) 5 SCC 222, it was held that the registration of a document which is compulsorily registrable under law amounts to constructive notice on a person aggrieved by the title or interest created by such document.*

37. *The limitation for challenging the Deed is three years as per Article 59 of the Limitation Act. The Supreme Court, in Mohd. Noorul Hoda v. Bibi Rafiunnisa, (1996) 7 SCC 767 observed as under in regard to limitation:*

"there is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. When the plaintiff seeks to establish his right to the property which cannot be established without avoiding an instrument, that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party. The party necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulate suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or whatever and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or whatever and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would therefore be clear that if he seeks avoidance of the instrument, decree or contract and seek a declaration he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the instrument first became known to him."

38. *Section 27 of the Limitation Act prescribes that upon expiration of the period of limitation provided, any person's right to sue for recovery of possession of immovable property is extinguished. It reads as follows:*

*"27. **Extinguishments of right to property** - At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."*

***39.** The Supreme Court in Prem Singh v. Birbal, (2006) 5 SCC 353 : AIR 2006 SC 3608 observed about the imperative nature of the provision, and held that:*

"11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed…"

***40.** The appellant himself had given "No Objection" in favour of Smt. Kalyani Devi and was always in the knowledge of the Conveyance Deed and any challenge now to the ownership/title of Smt. Kalyani Devi acquired by her by virtue of Conveyance Deed, is clearly time barred. The appellant took no steps to assert his rights at any point of time. In these circumstances, the supervening equity in favor of the respondents estops and bars the appellant from opposing the title of Smt. Kalyani Devi in the property in question.*

41. *The appellant never challenged the validity of the Conveyance Deed; rather he gave his "No Objection" in the year 1994 for mutation of property in favour of Smt. Kalyani Devi on the basis of which the Conveyance Deed was executed in her favour in 2000. Interestingly, even in the present proceedings, the Conveyance Deed and its genuineness has not been challenged nor is there any claim that it has been wrongly executed in favor of Smt. Kalyani Roy. The only plea now being set up is that she had acquired only life estate by virtue of the Will of her husband, who was admittedly the absolute owner of the property in question. Now the Conveyance Deed has attained finality and by virtue of this Conveyance Deed. Smt. Kalyani Roy became the absolute owner of the suit property and thus, competent to enter into the Collaboration Agreement with the Respondent No. 1.*

42. *The learned Single Judge has rightly held that Smt. Kalyani Roy had an absolute right in the suit property and findings of the learned Arbitrator contrary to the Will, were liable to be set aside being patently illegal.*

43. *Now the question which arises for consideration is whether it is within the scope of Section 34 to upset the findings of the learned Arbitrator. Section 34 of the Act, 1996, provides the ground for setting aside the domestic arbitral award if it is in conflict with "public policy of India". It has been explained that in conflict with public policy of India means (i) the award is induced or affected by fraud; or (ii) is in contravention with the fundamental policy of Indian Law; or (iii) is in conflict with the most basic notions of morality of justice."*

(viii) Satbir Singh v. Financial Commissioner, 2019 SCCOnline Del 7611.

"13. *In the instant case it is apparent that there is a registered Will dated 30.10.1984 in favour of the petitioners, the deceased Dalel Singh had gone to registrar's office for completing and executing the registration formalities of the*

Will which gives presumption that the deceased executed a valid Will in a sound and disposing state of mind. Had he been not in a sound and in disposing state of mind, there would not have been a registered Will in favour of the petitioners. Mere allegation at this stage that Will in question is forged and fabricated does not help Respondent No. 4 unless he discharges his onus that Will in question is forged and fabricated by the petitioners and at the same time, he, shows, his competence of inheritance or entitlement better than that of the petitioners before a competent Civil Court. Revenue officers should avoid getting into the intricacies of legality and validity of a registered Will or registered documents, once there exists a registered document in favour of either of the party, the effect of the registered document be given on the basis of presumption of it being validly executed. Otherwise it would lead to multiplicity of suits and gaining of time reaching neither here nor there, example is the instant case where more than 22 years has elapsed just to sanction one mutation."

(ix) Kanta Yadav v. Om Prakash Yadav, (2020) 14 SCC 102.

***"10.** The learned counsel for the respondents also referred to the Supreme Court judgment in Clarence Pais v. Union of India [Clarence Pais v. Union of India, (2001) 4 SCC 325] wherein, validity of Section 213 of the Act was challenged as unconstitutional and discriminatory against the Christians. This Court held as under : (SCC p. 332, para 6)*

"6. ... A combined reading of Sections 213 and 57 of the Act would show that where the parties to the will are Hindus or the properties in dispute are not in territories falling under Sections 57(a) and (b), sub-section (2) of Section 213 of the Act applies and sub-section (1) has no application. As a consequence, a probate will not be required to be obtained by a Hindu in respect of a will made outside those territories or regarding the immovable properties situate outside those territories. The result is that the contention put forth on behalf of the petitioners that Section 213(1) of the Act is

applicable only to Christians and not to any other religion is not correct."

11. *The statutory provisions are clear that the Act is applicable to wills and codicils made by any Hindu, Buddhist, Sikh or Jain, who were subject to the jurisdiction of the Lieutenant Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Madras or Bombay — [clause (a) of Section 57 of the Ac]. Secondly, it is applicable to all wills and codicils made outside those territories and limits so far as relates to immovable property within the territories aforementioned, clause (b) of Section 57. Clause (c) of Section 57 of the Act relates to the wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which provisions are not applied by clauses (a) and (b). However, sub-section (2) of Section 213 of the Act applies only to wills made by Hindu, Buddhist, Sikh or Jain where such wills are of the classes specified in clauses (a) or (b) of Section 57. Thus, clause (c) is not applicable in view of Section 213(2) of the Act."*

(x) Bacha F. Guzdar v. CIT, (1995) 1 SCR 876.

"7. *It was argued by Mr Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest [8 Tax Cases, p 704 at 710] that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property*

of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the Sholapur Mills Case [1950 SCC 833 : (1950) SCR 869, 904] . That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act (12th Edn.), p. 894 where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the Question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an

investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it."

FINDINGS AND ANALYSIS

32. Heard learned counsels for the parties at length as well as carefully perused the record of the captioned petition. I have also perused the Will executed on 5th September 2017.

33. The controversy in the instant application revolves around the appointment of an administrator *pendent lite* and removal of the executors which have been appointed by the Testator by way of the Will. The issues which arise for consideration by way of the instant application are that:

I. Whether a case for appointment of administrator pendente lite u/s 247 of the Indian Succession Act, 1925 made out?

a) Whether a prima facie challenge to the validity of the Will has been raised?

II. Whether a case has been made out to stay the EGM of IPP India Ltd. on 24.12.2022?

34. Learned senior counsel has submitted that the executors are acting in complete collusion with the respondents No.2 and 3 and have grossly failed in their duty to protect the estate of the Testator which has been substantially parted by the Respondents No.2 and 3. It is submitted that the executors have abdicated their responsibility to deal with the estate

and have acted in complete disregard to their statutory obligations under Section 211 and Section 337 of the Act. It is also argued that Respondents No. 2 and 3 are acting in a tearing hurry to frustrate the rights of the Respondent No.4.

35. It is trite law that the testator's wish regarding as to who will be the executor of his estate and carry out his Will must typically be respected, and an executor named by the testator should not be removed from his office unless, there is convincing proof that his continued appointment would be harmful to the estates of the deceased and frustrate the testator's Will. The named executor cannot be removed for a few isolated minor mistakes. This concept must be considered when determining whether the petitioners have provided enough evidence to have the executor removed from his/her role.

36. According to Section 211 of the Act, the executor of a deceased's will serves as the deceased's legal representative for all purposes and becomes the owner of the deceased's property as soon as the Testator passes away. It is a reasonably well-established legal principle that the executor may exercise his authority and carry out the conditions of the will even if probate is not granted. In fact, one of the key differences between an executor and administrator is that the former may act even before obtaining probate, whilst the latter cannot act until he has been awarded letters of administration. The interest of an executor in the estate of the deceased vests in him immediately on the death of the testator.

37. Therefore, courts will not readily remove an executor appointed in probate proceedings unless gross misconduct, gross mismanagement, abuse, or misuse of probate is demonstrated. There must be clear

evidence that the executor's continued presence is detrimental or detrimental to the property and would frustrate the will which he is charged by law and the records of the will to administer. Minor errors, erroneous assessments, or inadequate handling of matters are not sufficient grounds to replace the testator's expression of confidence.

38. In this context, it is important to reproduce Sections 247 and 301 of the Act.

> *"**247. Administration pendente lite**.—Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.*
>
> ***301. Removal of executor or administrator and provision for successor**.—The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate."*

39. It is important to observe that these Sections do not highlight any guidelines for the removal of any private executor or administrator. While exercising power under Section 301 of the Indian Succession Act, the Court must ensure that no malicious or misconceived grounds are raised to throttle the intentions of the testator by way of an application to remove the Testator. If the Court is of the opinion that the Executor has

acted or is acting improperly qua the Estate; or is acting in contravention to the intention of the Testator then, it shall be justified in exercising its jurisdiction under Section 301 of the Act in removing the executor and succeeding him by another. The main test which must guide the Court in reaching this conclusion is the best interests of the beneficiary. Even want of honesty or want of proper capacity to exercise duties or want of reasonable fidelity could justify an order under this section directing removal of the executor.

40. In view of the above-said principles, I am unable to agree with the contentions raised by the learned senior counsel that a case has been made out for the appointment of an administrator *pendent lite* more so, as in the instant case, no application has been moved under Section 301 of the Act to remove the incumbent Executor and provide for the succession of another person to such an office. Learned senior counsel for the Respondent No.4 has submitted that it is not necessary to move an application under Section 301 before moving an application under Section 247 of the Act and has relied on a judgment of Bombay High Court in ***Radhika Bhargava*** (*supra)* to contend that an application under Section 301 for removal of the Executor can only be maintained by one who accepts the Will as otherwise it would tantamount to blowing hot and cold at the same time, and therefore, the Respondent No.4 cannot be asked to bring forth an application under Section 301 of the Act.

41. The abovesaid judgment relied on by the learned senior counsel was a subject to challenge before a Division Bench of the Bombay High Court in Appeal No.56 of 2017, wherein the Division Bench of the Bombay High Court had set aside the above-relied proposition of law

passed by the learned single judge. The following observations of the judgment passed by the Division Bench in ***Radhika Bhargava vs. Arjun Sahagal*, (2019) SCC OnLine Bom 25** are relevant.

> ***"32.*** *For the aforesaid reasons, we find that finding of the learned Single Judge that application under Section 301 for removal of executor can be made only by a beneficiary and legatee who accepts the Will and cannot be made by a person who seeks to dislodge the Will or contest the application for probate or Letters of Administration with Will annexed, is not sustainable. Insofar as other findings are concerned, the same are not challenged before us."*

42. The reliance on *Inderjeet Singh (supra)* is also misconceived as the same was rendered in a different context and has no applicability in the facts and circumstances of the present case. It did not pertain to the absence of an application under Section 301 of the Act vis-à-vis remedy under Section 247 of the Act.

43. Accordingly, I am unable to accept the submissions so made by the learned senior counsel as if such was a case then, Section 301 will be rendered as superfluous which is not only against the settled rules of interpretation but is also in the face of the intention of the legislature.

44. It is apposite to refer to ***The Institute of Chartered Accountants of India vs. M/s Price Waterhouse & Anr.*, (1997) 6 SCC 312**.

> *"It is settled rule of interpretation that all the provisions would be read together harmoniously so as to give effect to all the provisions as a consistent whole rendering no part of the provisions as surplusage. Otherwise, by process of interpretation, a part of the provision or a clause would be rendered otiose."*

45. The Hon'ble Supreme Court in ***Sultana Begum vs. Prem Chand Jain,*** **(1997) 1 SCC 373** has made the following pertinent observations:

> ***"****12. In Canada Sugar Refining Co. v. R. [1898 AC 735 : 67 LJPC 126] , Lord Davy observed:*
> *"Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."*
>
> **XXXXXXX**
>
> ***15.*** *On a conspectus of the case-law indicated above, the following principles are clearly discernible:*
>
> *(1) It is the duty of the courts to avoid a head-on clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.*
>
> *(2) The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation between them.*
>
> *(3) It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".*
>
> *(4) The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction…."*

46. Therefore, the issue of naming an administrator *pendente lite* would not come up unless and until the Executor is initially removed by the appropriate Court in accordance with section 301 of the Act.

47. Learned senior counsel has also taken support from Section 332 of the Act to contend that there Respondent No.3 has acted under the Will and created third party rights over certain assets of the Testator being part of the Will without there being a title over such assets in favour of the Respondent No.3 inasmuch as the consent of the executor in terms of Section 332 was not taken in the instant facts and circumstances of the Case. In reply to the said contention, the Respondents No. 2 and 3 in their rejoinder have taken the following stand:

> *"The contents of para 40 of the Objections are entirely misconceived and are hence denied. It is submitted that the assent of Executors in the present case is a mere formality, and in any case such assent is clearly established based on the fact that the Answering Respondents had informed the Executors of transactions made in accordance with the present Will, whereupon they stood ratified."*

48. The law regarding section 332 of the Act is no longer *res integra.* In ***K Leelavathy Bai & Ors. Vs. P.V. Gangharan & Ors*., AIR 1999 SC 1267**, the Hon'ble Supreme Court made the following pertinent observations:

> *"Until and unless the said executors assent, the title of the property would not pass on to the legatee. (See Sec. 332 of the Act). Of course, in law, by the assent of the executor the title of a specific property would pass on to the legatee and this assent could be verbal, express or implied. (See Sec. 333 of the Act)."*

49. Reference to Section 211 is important as in terms of Section 211, the executors of the Will becomes the legal representatives if the deceased testator of all purposes. Section 211 is reproduced below:

> *211. Character and property of executor or administrator as such.—(1) The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.*
> *(2) When the deceased was a Hindu, Muhammadan, Buddhist, Sikh, [Jaina or Parsi] or an exempted person, nothing herein contained shall vest in an executor or administrator any property of the deceased person which would otherwise have passed by survivorship to some other person.*

50. It must be noted that all the executors would become the legal representatives and assent of one of them would not constitute as an assent on behalf of the other. Reference is made to ***K Leelavathy Bai & Ors. Vs. P.V. Gangharan & Ors (Supra)***:

> *"In our opinion, this pre-supposes the fact that the action of the lone executor would suffice to confer the title of the executors on the legatees. We are unable to agree with this proposition of law. Under Section 211 of the Act the property of the deceased testator vests in all the executors and if there are more than one executor, all of them together become legal representatives of the deceased testator. In such a situation, it is futile to contend that the estate of the deceased testator could be either controlled or represented by one of the legal representatives of the deceased to the exclusion of other legal representatives."*

51. Section 336 of the Act is also relevant in the present context. For the sake of clarity it is reproduced below along with the illustration (i) appended to it:

> *336. Effect of executor's assent.—The assent of the executor or administrator to a legacy gives effect to it from the death of the testator.*
>
> *Illustrations*
>
> ***(i) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.***

52. The Calcutta High Court in ***Khagendra v. Khatranath,* 1922 ILR 50 Cal 171** has held that the legatee has a vested right to the legacy even though the assent of executor is not given, with the result that any alienation by the legatee before assent by the executor is not void, but merely inchoate until assent is given.

53. When the executor gives his assent to a specific bequest, that would be sufficient to divest his interest as executor and to transfer the subject of the bequest of the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way, as provided in Section 333 of the said Act. On a perusal of the emails dated 28th May 2021 (Document B to the IA) forwarded to the Respondent No.4 by the executors and email dated 31st May 2021 (Document I to the IA) sent by Respondent No.4 to the Executors herein, I am of the firm opinion that Section 332 has been complied in the instant case as there has been a subsequent ratification of the transactions entered into by the Respondent No.3 by both the Executors herein.

54. Learned senior counsel has also taken support of Section 337 of the Act to contend that in any case, even if it is assumed that there was a ratification/consent of the Executors, but Section 337 would come into play which bars Executors to give consent before the expiration of one year from the death of the Testator. Section 337 is being reproduced below:

> *"337. Executor when to deliver legacies.—An executor or administrator is not bound to pay or deliver any legacy until the expiration of one year from the testator's death. Illustration A by his Will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year."*

55. I have carefully perused Section 337 and, I am of the considered opinion that this is not the correct interpretation of this section. The language used in Section 337 cannot be interpreted in the manner portrayed by Respondents No.4. The language used is that the Executor is '***not bound'*** and the language is not that the Executor is '***barred***'. It is a settled proposition of law that the words used in a statute should be given a plain and ordinary meaning when the language of the statute is plain and unambiguous. The Hon'ble Supreme Court in ***Union of India and another vs. Hansoli Devi and others,*** **(2002) 7 SCC 273**, made the following pertinent observations:

> *"9. "It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act."*

56. In ***Gurudevdatta VKSSS Maryadit vs. State of Maharashtra*, AIR 2001 SC 1980**, this Court observed :

> *"It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute".*

57. In other words, we must interpret the statute as it is, without changing or modifying its wordings. It is also pertinent to refer to forgotten Mimansa Rules of Interpretation which were our traditional principles of interpretation used for thousand of years by our jurists. According to the Mimansa Principles, the Sruti Principle or literal rule of interpretation will prevail over all other principles, e.g., Linga, Vakya, Prakarana, Sthana, Samakhya etc.

58. It is deeply regretted that these principles are not frequently cited in our Courts today in spite of the fact that these rules of interpretation have been one of our best accomplishment.

59. Another argument taken by the learned senior counsel is that a prima facie case has been made out raising suspicions over the alleged Will as the Testator was not in a fit mental state to execute the Will as it has been alleged to have been executed in the year 2017. He has also raised a ground that both the attesting witnesses are employees of the Respondent No.3 and were unknown to the testator. It is also posited that the execution of the alleged Will is vitiated by Duress, Coercion and Undue Influence as though the Testator was accompanied by his wife being Respondent No.2, but she has not been made an attesting witness and he was also accompanied by the Respondent No.3 to the SDM office being the major beneficiary to the said Will. It is also pointed out that the division of shares in unnatural as the Respondent No.4 has been substantially kept out from the Estate of the Testator and there is certain glaring discrepancies in the Will received over whatsapp by Respondent No. 4 and the Will received from the sub-registrar's office.

60. I have carefully considered these submissions and having done so, I am not persuaded by the arguments so advanced by the learned senior counsel. It must be appreciated that the court of probate is a court of conscience and not a court of suspicion and the wishes of the testator cannot be throttled merely because of certain aspersions are being casted on the authenticity of the Will without any basis. The Hon'ble Supreme Court in V. P***rabhakara vs. Basavaraj K. (Dead) by Lr.,*** **AIR 2021 SC 4830,** made the following pertinent observations:

> *"25.A testamentary court is not a court of suspicion but that of conscience. It has to consider the relevant materials instead of adopting an ethical reasoning. A mere exclusion*

> *of either brother or sister per se would not create a suspicion unless it is surrounded by other circumstances creating an inference. In a case where a testatrix is accompanied by the sister of the beneficiary of the Will and the said document is attested by the brother, there is no room for any suspicion when both of them have not raised any issue."*

61. A registered document carries a rebuttable presumption in its favour and it is presumed to be genuine in terms of Section 114(e) of the Evidence Act, 1872. The presumption though a rebuttable one but a burden is laid in the shoulders of the party alleging contrary to its genuineness. In ***Prem Singh & Ors. Vs. Birbal & Ors.*, (2006) 5 SCC 353**, the Hon'ble Supreme Court made the following pertinent observations:

> *"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption." (emphasis supplied) In view thereof, in the present cases, the initial onus was on the plaintiff, who had challenged the stated registered document."*

62. Learned senior counsel has relied on ***Dharam Chand (supra)*** to contend that no presumption can be drawn in favour of the registered Will about its genuineness. I am unable to agree with the said decision as then the solemn objective of registration to guard against fraud of a document *qua* Will would fall to the ground. It is pertinent to refer to the landmark decision of the Hon'ble Supreme Court in ***Rajni Tandon vs. Dulal***

***Ranjan Gosh Dastidar,* 2009 (14) SCC 782,** wherein the Supreme Court made the following observations:

> *"27.The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document."*

63. It is also pertinent to refer to the decision of the Hon'ble Supreme Court in ***Rani Purnima Devi & Anr. vs Kumar Khagendra Narayan Dev***, **AIR 1962 SC 567**, wherein the apex Court held as follows:

> *"There is no doubt that 'if a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness But the mere fact that a will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination……"*

64. Undoubtedly, registration will be an additional point weighing in favour of the execution of the Will and it cannot be an incontrovertible piece of evidence to prove the Will, which will be highly dependent on the facts and circumstances of the execution of the Will, but merely because one of the beneficiary under the Will is kept out from other assets of the deceased Testator or there has been unequal distribution cannot be a ground to question the authenticity and genuineness of the Will more so, when the Will under challenge is a registered document. It is also apposite to state that the entire findings on this controversy may not be relevant at this stage, as this Court at this stage has to only consider if any prima facie case has been made out or not.

65. The reliance on ***Atula Bala Dasi (supra)*** will not help the case of the Respondent No.4 as it was rendered in the context when an execution petition was stayed by the probate court as by way of the execution certain assets alleged to be owned by the judgment debtor were sought to be attached, which were in fact opposed, as not being owned by the judgment-debtor and being subject matter of the pending probate petition.

66. Learned senior counsel has emphatically prayed that as the EGM of IPP India Ltd scheduled on 24th December 2022 has been illegally scheduled and this Court must direct that status quo be maintained as by way of the EGM third party rights will be created over various assets being part of the Will of the Testator. It is submitted that IPP India Ltd conducts no business operations and is merely a holding company for the said immovable property, which is proposed to be sold at the behest of Respondent No.2 and 3. It is also argued that any sale would be irreversible and thus, would deprive the Respondent No.4 of her rights.

67. Learned counsel for Respondents No. 2 and 3 has taken a plea that the assets of Rishabh Holdings Pvt. Ltd. do not form part of the Will of the Testator and this Court being a court of probate cannot adjudicate upon assets which do not form part of the Estate of the Testator. It is further argued that even if it is assumed that the assets of the company form part of the Estate of Testator but then also as the assets of the company are exclusively owned by the company itself and not the shareholders, and as the company is not a party to the present proceedings therefore, no adverse orders can be passed against the company. It is also submitted that such a relief is clearly barred in terms of Section 430 of the Companies Act, 2013.

68. This Court finds force in the submissions raised by the learned counsel for Respondents No.2 and 3 inasmuch as on a careful perusal of the Will it would show that the deceased Testator's shareholdings *inter alia* in Rishabh Holdings Pvt. Ltd., Sobhagya Capital Options Limited and IPP India Limited were bequeathed to the Respondent No.3 and, it is not the case of Respondent No.4 that the shareholdings of the said companies which constitute the majority stakes in IPP India Ltd. were bequeathed to the Respondent No.4 and the Respondents No.2 and 3 are illegally intermeddling over the shares which have not been bequeathed in their favour.

69. This Court is also conscious of the dictum of the Hon'ble apex court in ***Bacha F. Guzdar vs Commissioner of Income Tax,*** **(1995) 1 SCR 876** wherein, it was categorically held that a shareholder does not acquire any interest in the assets of the Company. The relevant portion is reproduced below:

> *"7….. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company.* ***A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them****. The interest of a shareholder vis-a-vis the company was explained in the Sholapur Mills Case . That judgment negatives the position taken up on behalf of the appellant that a shareholder has*

> *got a right in the property of the company. It is true that the shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company.* ***The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders****....."*

70. The reliance of the learned senior counsel on ***Universal Cables (supra)*** will not be of any relevance as it was rendered in the context where the executor of the Will had died and subsequent to that only an administrator *pendent lite* was appointed in the best interests of the affairs of the Estate. Therefore, this Court is not inclined to stay the EGM of IPP India Ltd. scheduled for 24th December 2022.

CONCLUSION

71. In view of the foregoing discussion on law and facts, this Court is of the considered opinion that the present application is not only liable to be dismissed on merits but also on the ground of maintainability as no preceding application under Section 301 of the Act has been filed by the Respondent No. 4.

72. Accordingly, **IA No.9861/2022** being devoid of any merit is dismissed both on the grounds of maintainability as well as on merits for the reasons discussed in the aforesaid paragraphs.

73. Before parting, though not specifically in the facts of the present case, this Court berates as to how a web of complex IAs is deliberately created in the civil suits as well as other petitions pending only to ensure

that the main matter never meets its logical conclusion and the precious judicial time is exhausted in adjudicating only the numerous IAs. It should be noted that until the Bar and Bench comes together to fix responsibility qua the meritless IAs filed, the main matters will continue to linger and will never see the light of the day. This court is conscious of its duty to the citizens of the country and hence, is constrained to make such observations.

74. The judgment be uploaded on the website forthwith.

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List on 21st February, 2023.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 23, 2022
gs/mg

Click here to check corrigendum, if any