

**IN THE COURT OF SH. SUDHANSHU KAUSHIK :
ADDITIONAL DISTRICT JUDGE-02 & WAQF TRIBUNAL :
PATIALA HOUSE COURTS : NEW DELHI**

PC No.20/2022
CNR NO.DLND01-005710-2022

IN THE MATTER OF :-

NAINA KANTILAL NATALWALA
(THROUGH SPA HOLDER
SH. AKASH GUPTA)
W/O LATE SH. SHYAM MURARI ARORA
R/O HOUSE NO.101, CARENIUP AVE,
GWELUP 6018, PERTH, WESTERN AUSTRALIA,
AUSTRALIA

.....PETITIONER

VERSUS

1. THE STATE
(GOVT. OF NCT OF DELHI)
2. SH. GAUTAM MURARI ARORA
S/O LATE SH. SHYAM MURARI ARORA
R/O HOUSE NO.14, MURRAY STREET,
COMO, WESTERN AUSTRALIA 6152,
AUSTRALIA
3. SH. SIDDHARTH MURARI ARORA
S/O LATE SH. SHYAM MURARI ARORA
R/O HOUSE NO.14, MURRAY STREET,
COMO, WESTERN AUSTRALIA 6152,
AUSTRALIA
4. MS. GEETANJALI MURARI ARORA
D/O LATE SH. SHYAM MURARI ARORA
R/O HOUSE NO.23, MULLAN STREET,
FADDEN-2904, CANBERRA, AUSTRALIA
5. MS. NIHARIKA MURARI ARORA
D/O LATE SH. SHYAM MURARI ARORA
R/O HOUSE NO.14, MURRAY STREET,
COMO, WESTERN AUSTRALIA 6152,
AUSTRALIA

6. SH. ADITYA MURARI ARORA
S/O LATE SH. SHYAM MURARI ARORA
R/O HOUSE NO.101, CARENIUP AVE,
GWELUP 6018, PERTH, WESTERN AUSTRALIA,
AUSTRALIA
7. SH. ROHIT KUMAR
S/O LATE SH. KHAN CHAND
R/O SOOKSHAM INTERNATIONAL C/4,
29B, LAWRENCE ROAD, DELHI-110035
8. SH. KRISHAN MURARI
S/O LATE SH. KHAN CHAND
R/O SOOKSHAM INTERNATIONAL C/4,
29B, LAWRENCE ROAD, DELHI-110035
9. HSBC BANK
MAIN BRANCH NO.25,
BARAKHAMBHA ROAD,
NEW DELHI-110001

.....RESPONDENTS

DATE OF INSTITUTION	:	08.07.2022
DATE OF CONCLUSION OF FINAL ARGUMENT	:	08.07.2023
DATE OF PRONOUNCEMENT OF ORDER	:	01.08.2023

J U D G M E N T

1. This is a petition under Section 228 read with Section 278 of the Indian Succession Act, 1925 (*hereinafter referred to as 'the Act'*) for the grant of Letter of Administration in respect of the Will of Late Sh. Shyam Murari Arora.
2. Petitioner Smt. Naina Kantilal Natalwala is a resident of Australia. She is the wife of Late Sh. Shyam Murari Arora (*hereinafter referred to as 'the testator'*). She has filed the present petition through Sh. Akash Gupta, who has been authorized to do so by means of a Special Power of Attorney (SPA) dated 10.01.2022.

3. The brief facts, as disclosed in the petition, are as under:

- (a) Testator was a resident of 53, Lakeway Drive, Kingsley, Western Australia. He executed a Will dated 24.05.2012 during his lifetime. In terms of the Will, testator appointed the petitioner as executor and the trustee of the Will. The Will was duly signed and executed by the testator in the presence of two witnesses, who have signed and attested the Will in the presence of the testator and in presence of each other. The details of the attesting witnesses are; (a) Ms. Nicola Mevay D/o Peter Spensley Bates R/o Unit 3, 7 Prindiville Drive and (b) Ms. Renne Lee Carleys D/o Gary Collins R/o 29, Kirkimbie Street, Carramar, WA-6031. Testator died in Australia on 14.06.2012. The Will has been proved and registered in the Supreme Court of Western Australia, Probate Division vide order dated 31.08.2022.
- (b) It has been disclosed that a part of the subject matter of the Will is self acquired movable property of the testator in the form of bank accounts located outside the territorial limits of India. The remaining subject matter of the will dated 24.05.2012 is self acquired movable property of the testator in the form of Bank Accounts in the HSBC Bank, Main Branch, No. 25, Barakhamba Road, New Delhi-110001, along with bonds of national highways authority of India and the rural electrification corporation, India which would fall within the jurisdiction of this court. Schedule of properties has been annexed with the petition.
- (c) It has been stated that by virtue of para-5 of the Will, the testator bequeathed the FCFA account bearing No.051-705770 maintained at HSBC Bank, Main Branch, No. 25, Barakhamba Road, New Delhi-110001 in favor of the petitioner. The estate of the testator includes Foreign Currency Fixed Deposit Account (FCFA) account maintained

with the HSBC Bank, Main Branch, No. 25, Barakhamba Road, New Delhi-110001 bearing A/c No.051-705770 within the jurisdiction of this court. By means of the present petition, petitioner has sought Letter of Administration in respect of the afore-mentioned bank account of the testator.

- (d) It has been further disclosed that the Foreign Currency Fixed Deposit Account (FCFA) maintained with the HSBC Bank, Main Branch, No. 25, Barakhamba Road, New Delhi-110001 is having account bearing No. 051-705770 and it is further divided into four accounts i.e 051-705770-272, 051-705770-2062, 051-705770-063 and 051-705770-064.
- (e) Petitioner has submitted that she is the sole executor of the Will of testator and she has already taken steps to deal with the estate of the testator in Western Australia.

4. The other legal heirs of the testator have been impleaded as respondent No.2 to 8. State has been impleaded as respondent No.1 while HSBC Bank is respondent No.9. During course of trial, respondent No.9 was deleted from the array of parties. The details of the legal heirs of the testator are as under:

- i. Sh. Gautam Murari Arora – Son (respondent No.2).
- ii. Sh. Sidharth Murari Arora – Son (respondent No.3).
- iii. Ms. Geetanjali Murari Arora – Daughter (respondent No.4).
- iv. Ms. Niharika Murari Arora – Daughter (respondent No.5).
- v. Sh. Aditya Murari Arora – Son (respondent No.6).
- vi. Sh. Rohit Kumar – Brother (respondent No.7).
- vii. Sh. Krishan Murari – Brother (respondent No.8).

5. Notice of the petition was issued to the respondents and citation was published in National daily Newspaper ‘The Statesman’ and ‘Veer

Arjun' editions dated 25.08.2022. Notice was also published in the Newspaper 'The West Australian' edition dated 15.09.2022.

6. Petitioner filed the printouts of the emails and affidavits of respondent No.2 to 5 & 8 along with the certificate under Section 65B of the Indian Evidence Act. Respondents mentioned in the affidavit that they have no objection to the grant of probate. Respondent No.6 could not be served. Respondent No.7 appeared in the court and filed a similar affidavit giving his no objection to the grant of probate. His separate statement was recorded.
7. Petitioner has placed on record the death certificate of testator and authenticated copy of the Will along with the probate granted by the Supreme Court of Australia vide order dated 31.08.2012. Pursuant to the notice, Sh. Pritesh Kesaria, Executive appeared on behalf of HSBC Bank, Barakhamba Road, New Delhi and furnished the details of the bank accounts of the testator, which are as under:
 - i. Account No.051-0705770
 - ii. Account FCR INHSBC051-0705770-272
 - iii. Account TNC INHSBC051-0705770-262
 - iv. Account TNC INHSBC051-0705770-263
 - v. Account TNC INHSBC051-0705770-264
 - vi. Account (Investment) @EF 051705770 Equity
8. The High Court of Delhi has held in the matter of "*Merete Simonsen Vs. State & Anr.*" *TEST.CAS. 38/2021 decided on 13.05.2022 (Neutral Citation No.2022/DHC/001901)* as under:

"6. In the judgment dated 12th February, 2021 passed in W.P. (C)1402/2021 titled Dr. Sanjay Khanduja vs. Punjab National Bank and Anr., a Coordinate Bench of this Court has

observed that the only requirement for claiming rights under a probate granted by a foreign court, would be to file apostilled copy of the judgment of the said foreign court. Counsel for the petitioner places reliance on the judgment of this Court in Mr. Mark Douglas Holford vs. State, 2018 SCC OnLine Del 12297, the relevant observations of the said judgment are set out below:

"6. Section 228 of the Indian Succession Act, 1925, reads as follows:

"228. Administration, with copy annexed, of authenticated copy of Will proved abroad.--When a Will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of [India], and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed."

7. This court in Narain Malik v. State (supra), held as follows:

"8. The Will has already been proved in the Foreign Court of competent jurisdiction and the only requirement stipulated under section 228 of the Act for seeking letter of administration is that the petitioner has to file authenticated copy of the Will dated 12.3.2008. In Dharamvir Sharma v. State, 148 (2008) DLT 149, this court held as follows:

"7. The object of section 228 is to dispense with the need to produce the original will owing to its deposit in some other Court. The order under this provision is not like section 276; however, its ancillary to a grant made by a competent court. Before making an order on such application, the court has satisfy itself that the copy produced before it answers the description in section 228."

8. It is manifest from the facts and the records that the petitioner has placed on record a properly

authenticated copy of Will dated 20.11.1992 of Ms. Maria Geeta Lisa Therese Anastasia Luzia Alvares Meneses, which has been proved and registered in the Foreign Court of competent jurisdiction, i.e. in the High Court of Justice, Family Division, Leeds District Probate Registry, United Kingdom.

9. Accordingly, the present petition is allowed and the petitioner is hereby granted Letters of Administration in respect of the property bearing Flat No. 20, Dakshineswar, 10 Hailey Road, New Delhi along with the movables lying therein subject to the petitioner paying the requisite court fees on the valuation as done by the SDM, Chanakyapuri, New Delhi and upon furnishing administration and surety bond. The Registry will issue Letter of Administration on his depositing the stamp duty as per law."

9. Similar view has been taken by the High Court of Delhi in the matter of *"Dr. Surender Narayan Raizada Vs. State and Another"* TEST. CAS. 44/2013 & IA 9806/2013 decided on 15.11.2018 and *"Dharamvir Sharma Vs. State and others"* 2008 SCC OnLine Del 205.

10. In view of the aforesaid facts and settled legal position, all parameters of Section 228 read with Section 276 of the Indian Succession Act, 1925 are fulfilled in the present case. The petitioner has placed on record the duly authenticated copy of the Will of testator Late Sh. Shyam Murari Arora in respect of which, the probate has been granted by the Supreme Court of Western Australia, Probate Division. As such, this is an uncontested case for the grant of probate.

11. Accordingly, petitioner is entitled to the grant of Letter of Administration in respect of bank accounts in the HSBC Bank, Main Branch, No. 25, Barakhamba Road, New Delhi-110001, details whereof

have been given in para-7 of this judgment. In view of the above, Letter of Administration be issued subject to filing of requisite court fee and furnishing of administration bond or surety bond. It is clarified that under the present proceedings, the court is not adjudicating the title of the property in respect of which Letter of Administration has been granted.

12. File be consigned to record room after necessary compliance.

**Announced in the open court on
01.08.2023**

**(Sudhanshu Kaushik)
Addl. District Judge-02 & Waqf Tribunal
New Delhi District, Patiala House Courts,
New Delhi/01.08.2023**