

High Court Appeal No. 233 of 2015

1. For hearing of main case

DATE OF JUDGMENT : 05.12.2016

JUDGMENT

2. The facts of the case in nutshell for the disposal of this appeal are that the appellant filed SMA No. 37 of 2015 for grant of letter of administration in respect of immovable properties which belonged to the deceased mother of the appellant Mst. Khair-un-Nisa, who died on 07.08.2003 at Karachi. This SMA was granted and letter of administration pertaining to the immovable properties mentioned in the schedule of properties left by the deceased were directed to be issued in the name of the

appellant as per rules by Order dated 06.05.2015. Subsequently, the appellant filed CMA No. 539/2015 for exemption to furnish surety/security, which was dismissed by Order dated 14.05.2015. Against this Order, the appellant has filed this appeal.

3. We have heard the learned counsel for the appellant and perused the material available on the record.

4. The learned counsel for the appellant contented that all the legal heirs of the deceased are adult and had given their no objection for grant of letter of administration in favour of the appellant and further the matter is non-contentious therefore the Court was legally obliged to grant exemption. In support of his arguments, the learned counsel for the appellant relied upon the following case-laws:-

- i) Muhammad Shafiq (PLD 2014 Sindh 541);
- ii) Kamran Mirza Vs. Moazzam Mirza (PLD 2014 Sindh 500);
- iii) Mst. Razia Khatoon (1996 MLD (Karachi) 873);
- iv) Ramchandra Ramratan Vs. Ramgopal Onkarji and others (AIR 1957 Madhya Bharat 31).

5. We have carefully gone through all the above-referred reported Judgments and have come to the conclusion that none of these are applicable to the instant matter. The case of Muhammad Shafiq reported in PLD 2014 Sindh 541 was on a different point, wherein, amendment in succession application was sought and therefore not applicable to the facts of the instant case. The case of Kamran Mirza Vs. Moazzam Mirza reported in PLD 2014 Sindh 500 was in respect of succession certificate and not that of a letter of administration and therefore not applicable to the facts of the instant case.

The case of Mst. RaziaKhatoonreported in 1996 MLD (Karachi) 873 was also in respect of a succession certificate and not letter of administration and therefore not applicable to the facts of the instant case. The case of RamchandraRamratan Vs. RamgopalOnkarji and others reported in AIR 1957 Madhya Bharat 31 was in respect of grant of the probate and not letter of administration and therefore not applicable to the facts of the instant case.

6. So far as the letter of administration is concerned, the law has been correctly interpreted by Mr. Justice Saeeduzzaman Siddiqui (as he then was) in the case of Muhammad Javed Akhtar reported in NLR 1987 CLJ 219 (Karachi); wherein, the following principle of law have been settled:-

- i) The language of Section 291 (1) of the Succession Act leaves no discretion with the Court while granting Letters of Administration to a petitioner, to dispense with the execution of the bond or providing surety in as much as the word “shall” is used in an imperative sense and hence mandatory;
- ii) Accordingly, where the Court grants Letters of Administration to a petitioner on his application, the Court has no power to dispense with the surety, which is a condition precedent for issuance of Letters of Administration;
- iii) Whereas, under Section 291 (2) (b) of the Succession Act, there is a discretion with the Court to demand a bond from a person to whom a probate has been granted in as much as the word “may” is used and hence discretionary;
- iv) In respect of Succession Certificates, where the case before the Court does not fall under Sub-Section (3), or, Sub-Section (4) of Section 373 of the Succession Act, the Court has the discretion to dispense with the security while granting the Succession Certificate, but in respect of cases which fall under Sub-Section (3) or Sub-Section (4) of

Section 373 of the Succession Act, the Court cannot grant the Succession Certificate without first obtaining the security from the petitioner;

- v) Rule 400 of the Sindh Chief Court Rules (O.S.) is in the nature of subordinate legislation and it cannot over-ride the effect of Section 291 of the Succession Act, which is a substantive provision of law and hence to the extent of inconsistency between the two, the substantive provisions of Section 291 of the Succession Act will prevail over Rule 400 of the Sindh Chief Court Rules (O.S.).

7. It is a well settled principle of law that where a particular procedure is prescribed for doing something that thing must be done according to that procedure otherwise the entire proceedings would be illegal or irregular. Reliance can be placed upon the cases of (i) Hafeezullah and others Vs. Abdul Latif and others (PLD 2002 Karachi 457) and (ii) Mst. Rukhsana Vs. Province of Sindh and others (SBLR 2013 Sindh 157).

8. We have carefully gone through the impugned Order of the learned Single Judge and have come to the conclusion that the learned Single Judge has rightly decided the said application in accordance with law and the said Order does not require any interference in appeal.

9. In view of the above discussion, this appeal is dismissed with no order as to costs.

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