



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

+ **FAO No.183/2017**

% **10th November, 2017**

GAYATRI AGGARWAL

..... Appellant

Through: Mr. Shubham Gupta,
Advocate.

versus

INCOME TAX COMMISSIONER & ORS.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

FAO No. 183/2017 and C.M. No.40420/2017 (for additional evidence by appellant)

1. This first appeal is filed under Section 384 of the Indian Succession Act, 1925 impugning the judgment of the Trial Court dated 30.8.2016 whereby the trial court has dismissed the objection of the appellant/wife/petitioner for grant of succession certificate with respect to the movables and securities of her husband late Sh. Somesh Aggarwal.



2. It is noted that the trial court has dismissed the petition by observing that the appellant/petitioner/wife failed to prove that the deceased Sh. Somesh Aggarwal was the sole proprietor of M/s Yash International as no such documents were filed and also because the appellant/petitioner failed to prove that she was the wife of the deceased. In this Court the appellant/petitioner has therefore filed an application under Order XLI Rule 27 CPC supported by her fresh affidavit by way of evidence in which the appellant/petitioner has proved various documents being the aadhar card, election identity card, passport of the appellant/petitioner, documents of Department of Value Added Tax of Government of NCT of Delhi, and all of which documents in my opinion clearly show that not only the appellant/petitioner is the widow of late Sh. Somesh Aggarwal but also that Sh. Somesh Aggarwal was in fact the proprietor of M/s Yash International.

3. In my opinion the trial court should not take such harsh view in uncontested cases as it has taken by the impugned judgment in dismissing a petition seeking succession certificate especially where other legal heirs have given their no objections to grant of the



succession certificate. If the trial court found that for some reason the relevant documents were not filed on behalf of the appellant/petitioner showing her relationship with the deceased or how the deceased was the proprietor of M/s Yash International, then, surely in the interest of justice before dismissing the petition seeking succession certificate, the trial court could have pointed out this fact to the appellant/petitioner and have given an opportunity to the appellant/petitioner to remedy the defects. This was however not done by the trial court.

4. In view of the above discussion, this appeal is allowed. Appellant/petitioner is entitled to the succession certificate of the movable assets and securities of her deceased husband late Sh. Somesh Aggarwal. The succession certificate will be issued by the court below on the appellant/petitioner filing the necessary court fee. It is also directed that since the appellant/petitioner is the widow of the deceased and all the contesting private respondents who are near relations of the deceased have give their no objections, the court below will not insist on an administrative bond or surety bond from the appellant/petitioner for grant of the succession certificate.



5. Appeal is accordingly allowed and disposed of in terms of aforesaid observations and the appellant/petitioner is directed to appear before the District & Sessions Judge (North West), Rohini Courts, Delhi and the District & Sessions Judge will now mark the case for issuing of succession certificate to the appellant/petitioner to a competent court in accordance with law.

6. Next date of 7.12.2017 is cancelled.

NOVEMBER 10, 2017
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VALMIKI J. MEHTA, J

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