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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 24th August, 2020
+ **CM(M) 389/2020 and CM APPL. 20110/2020, 20111/2020**
VIJAY GOEL Petitioner

Through: Mr. Apoorv Agarwal, Ms. Riya
Thomas and Ms. Priyanka Sharma,
Advocates (M: 9899975050).

versus

STATE, NCT OF DELHI & ORS. Respondent

Through: Mr. Rizwan, Advocate for R-1.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been held through video conferencing.
2. The present application has been filed by the Petitioner, seeking urgent orders for publication of the citation in order to expedite issuance of the probate in Probate Petition No. P.C./1/2019. A detailed order was passed by this Court on 23rd July, 2020 emphasising the urgency in this matter and how the Id. ADJ is not passing effective orders in the present case. Having noticed the urgency expressed on behalf of the Petitioners, as per the said order, the matter was directed to be listed on 5th August 2020 and the Court was directed to issue the citation, by 14th August, 2020 and proceed further in the probate petition. The operative portion of the order dated 23rd July, 2020 reads as under:-

“6. Ld. Counsel submits that most civil courts and commercial courts are not functioning and matters are simply being adjourned.

7. There is no doubt that due to the announcement of the lockdown, the functioning of subordinate courts

has been impeded. However, from time to time, the High Court has issued circulars and orders directing the manner of functioning of subordinate courts. The office order issued by the Delhi High Court dated 13th June 2020 in respect of functioning of subordinate courts directs as under:

“The Hon’ble Administrative and General Supervision Committee of this Court while considering further extension of suspended functioning of this Court and the Courts Subordinate to this Court and taking note of the prevalent situation, in continuation of this Court’s Office orders No.373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020 and No.R- 77/RG/DHC/2020 dated 15.04.2020, No.R-159/RG/DHC/2020 dated 02.05.2020, No.R-235/RG/DHC/2020 dated 16.05.2020, R-305 /RG/DHC/2020 dated 21.05.2020 and No.1347/DHC/2020 dated 29.05.2020 has been pleased to order that the functioning of the Courts subordinate to Delhi High Court shall continue to remain suspended till 30.06.2020.

It is further ordered that the matters listed in the courts subordinate to Delhi High Court on 15.06.2020 be adjourned en bloc in terms of the earlier directions. It has further been resolved that w.e.f. 16.06.2020, all the subordinate courts, shall take up urgent cases (except where evidence is to be recorded) of their respective courts through Video Conferencing mode. The other matters be

adjourned accordingly.”

In this petition, urgency has been expressed but as stated by Ld. Counsel, there was no opportunity to express the urgency to the Court.

8. *In the present case, the Probate petition was filed in February 2019 and was first listed in April 2019. Transfer petition was moved seeking transfer of the petition to the court of the Ld. ADJ. On 9th December 2019, the Court issued notice and directed publication of the citation. It is stated that after the passing of the said order, despite endeavours being made by counsel, notice has not been issued and citation was not received. The matter was then listed in February 2020. Early hearing was sought in which again notice has been issued. Urgency has been expressed owing to the age of the Petitioner, who is 72 years of age, and as the family members wish to dispose of the asset as per the last wish of the testator.*

9. *Urgency is clearly established in the present case. The proceedings in the case cannot be postponed indefinitely. It is accordingly directed that the citation in this case may be prepared and issued to the Petitioner by the Court of the Ld. ADJ where the probate petition is pending. Upon receiving the citation, the Petitioner shall arrange for the same to be published. After publication, copy of the citation be placed on record of this case.*

10. *On the next date of hearing, the various heirs who have given their NOCs for the probate being granted, being Mr. Sushil Gupta,, Ms. Sudershan Mittal, Mr. Yash Paul Goel, Mr. Raj Pal Goel and Mr. Dharam Pal Goel, are permitted to join the video conferencing hearing. Ld. counsel for the Petitioner to inform them of the next date of hearing.*

11. *Let this order be sent to the court of ADJ-03/ Patiala House Courts, New Delhi. List the matter before the ADJ on 5th August 2020. Citation be provided to Petitioner’s counsel by 14th August 2020*

and the same be published before the next date of hearing before this Court. Hearing may be held by video conferencing.

12. Copy of this order be sent to the Ld. Registrar General for placing before the Committee for 'Graded Action Plan' of the High Court for its consideration. List on 16th September, 2020."

3. Subsequent to this order, the Administrative and General Supervision Committee of the High Court has issued a notification dated 30th July, 2020 in respect of the functioning of the District Courts and it has been made abundantly clear that all cases should be taken up by judicial officers through video conferencing hearings. Even physical hearings may also be permitted if there is grave urgency. The notification reads as under:-

"The Hon'ble Administrative and General Supervision Committee of this Court while considering further extension of suspended functioning of this Court and the Courts Subordinate to this Court and in view of the prevailing situation of spread of coronavirus (2019-nCoV) pandemic in the NCT of Delhi, in continuation of this Court's Office orders No.373/Estt./E1/DHC dated 23.03.2020, No.159/RG/DHC/2020 dated 25.03.2020 and No.R-77/RG/DHC/2020 dated 15.04.2020, No.R159/RG/DHC/2020 dated 02.05.2020, No.R- 235/RG/DHC/2020 dated 16.05.2020, R305/RG/DHC/2020 dated 21.05.2020, No.1347/DHC/2020 dated 29.05.2020, No.16/DHC/2020 dated 13.06.2020, No.22/DHC/2020 dated 29.06.2020 and 24/DHC/2020 dated 13.07.2020 has been pleased to order that the functioning of the Courts subordinate to Delhi High Court till 14.08.2020 shall be as per the following:-

The courts subordinate to this Court shall henceforth take up all the cases listed before them through videoconferencing. However, evidence shall be recorded only in ex-parte and uncontested matters where the same is required to be tendered by way of affidavit. The judicial officers shall be permitted to come to court for holding videoconference hearings from their respective chambers only when they do not have requisite technical infrastructure at their residences

or where there is a breakdown of such infrastructure. Physical hearings shall be permitted in those matters only where a grave urgency is involved and hearing through videoconferencing is not feasible. For pronouncement of judgment in a criminal case, wherever required, the judicial officer may come to court for the same. In all such instances of physical hearings, the norm of social distancing be scrupulously adhered to.”

4. Despite clear orders dated 23rd July, 2020 and the directions of the High Court, unfortunately, the matter was not listed on 5th August, 2020 and no citation was issued. Ld. counsel for the Petitioner submits that a copy of the last order passed by this Court dated 23rd July 2020, which was downloaded by him from the website of the Delhi High Court, was placed along with the application before the ld. ADJ. The said application was filed on 13th August, 2020. Several calls were also made and e-mails were addressed, however, it has not been listed till date before the ld. ADJ. Mr. Agarwal, ld. counsel also submits that he has sent a specific message to the Reader praying that the matter be listed before the ld. ADJ. The Petitioner was then told to obtain a certified copy of the order of this Court dated 23rd July, 2020. Ld. counsel has also, during the course of hearing, shown an order passed by the Reader on 22nd August, 2020.

5. A copy of the said order passed by the Reader on 22nd August 2020 has been perused which shows that the case has been adjourned to 11th February 2021 before the ld. ADJ. The sequence of events post the order dated 23rd July, 2020 shows that there has been no compliance whatsoever of the said order. The insistence on a certified copy of the order dated 23rd July 2020, by the lower court is also completely untenable inasmuch as the orders which are being uploaded currently are digitally signed both by the

Judge as also the Private Secretary. The order filed before the Ld. ADJ was similarly digitally signed. Such orders do not require any further certified copies to be filed. This issue has also been dealt with by this Court in ***Rahul Babbar v. Central Bureau of Investigation (CRLA. 215/2020)*** by order dated 8th June, 2020 wherein it was clearly held that the authenticity of orders uploaded on the official website of the Delhi High Court is easily verifiable. Thus certified and authenticated copies cannot be insisted upon. The observations of the court are as under:

“...
During the lockdown period and even otherwise, it is a matter of common knowledge that orders are uploaded on the official website of the Delhi High Court. The same is easily verifiable by anyone including the Ld. District Judge in this case. Alternatively, when bail orders are issued they are communicated to the Jail Superintendent by the Registry. If the Ld. District Judge had any doubt as to the authenticity of the order, the same could have been also easily confirmed from the Judicial Branch of the Delhi High Court. But to turn down a party who has been given bail and refuse to release him on this specious plea is completely unacceptable.”

6. Under such circumstances, the adjourning of this matter to February, 2021 while clearly being aware of the urgency expressed by this Court is inexplicable. Accordingly, it is directed that a report be called for from the Id. District Judge, Patiala House Courts, New Delhi after enquiring into the matter. The said report be filed by 27th August, 2020. The Id. District Judge shall also ensure that the citation in this matter is issued and appropriate steps are taken for proceeding further in the probate petition. A scanned copy of the entire trial court record be also called for by the next date.

7. The present order shall be communicated by the Id. Registrar General

to the Id. District Judge, Patiala House Courts, New Delhi. A written explanation shall also be called for from the Judicial Officer concerned, namely, Mr. Munish Markan, Id. ADJ-03, Patiala House Courts, New Delhi.

8. The present order along with the order passed in ***Rahul Babbar*** (*supra*) be circulated to all District Judges so that Courts do not insist upon certified or authenticated copies of orders, once the orders are digitally signed and/or available on the official website of the Delhi High Court.

9. List on 28th August, 2020.

PRATHIBA M. SINGH
JUDGE

AUGUST 24, 2020
MR/A

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