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

Date of Decision : 18.12.2020

+ **W.P.(C) 3337/2020**

KRISHAN LAL GARG

..... Petitioner

Through: Mr.Fanish K. Jain, Mr.Ankit
Garg & Mr.Deepanshu Garg,
Advs.

versus

**INVESTOR EDUCATION AND PROTECTION FUND
AUTHORITY & ANR.**

..... Respondents

Through: Ms.Shiva Lakshmi, CGSC with
Mr.Siddharth Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been heard through video conferencing.
2. This petition has been filed by the petitioner praying for the following relief:-

“i) A direction, order or writ in the nature of mandamus or any other appropriate writ may kindly be issued directing the Respondent No.1 to refund the shares and unpaid dividend to the petitioner requested vide SRN No.H84549096.”

3. It is the case of the petitioner that the petitioner is the beneficiary of the Will dated 25.03.1999 of his brother late Shri Tek Chand Garg *inter alia* with respect to 6,200 shares of M/s Radico

Khaitan Limited. The said shares, on remaining unclaimed had been transferred by the company to the respondent no. 1. The petitioner vide letter dated 14.11.2018 applied to the company for transmission of the said shares. Thereafter, by a certificate dated 23.07.2019, an Entitlement Letter was issued by the company in favour of the petitioner with respect to the said shares. The petitioner thereafter on 23.08.2019, applied to the respondent no. 1 for refund of the above shares and the unpaid dividend relating thereto, deposited by the company with the respondent no. 1. The respondent no. 1 required the petitioner to produce a Registered Will in support of his claim. A copy the same was also submitted by the petitioner with the respondent no. 1 on 15.11.2019. On 19.11.2019, the respondent no. 1 called upon the petitioner to produce succession certificate or probate of the Will or letter of administration or a Court Decree duly notarized, in support of his claim. The petitioner claimed that the petitioner did not require the Will to be probated under the Indian Succession Act, 1925. However, as the respondent no. 1 insisted on the same, the present petition was filed.

4. The learned counsel for respondent no. 1 has placed reliance on the provisions of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019 (hereinafter referred to as the 'Rules') to submit that in terms of Clause 2.3 of Schedule II to the said Rules, the applicant is to produce the probate of Will or a Court Decree in support of his claim where the value of securities is more than Rupees

Two Lakhs. She submits that as the application of the petitioner was pending on the date of coming into force of the said Rules, the applicant/petitioner is to comply with the said requirement. She further places reliance on the judgment of the Supreme Court in *Memon Abdul Karim Haji Tayab, Central Cutlery Stores, Veraval v. Deputy Custodian-General, New Delhi and Others*, (1964) 6 SCR 837, to submit that as this is only a procedural requirement, the same shall be applicable to all the pending applications as well.

5. On the other hand, the learned counsel for the petitioner submits that Schedule II was introduced in the Rules by way of Rule 6 (vi) of the Rules, which was specifically made to come into force only with effect from 20.09.2019. As the said Rule creates a new disability on the applicant, the same has to be read prospectively. In this regard, he places reliance on the judgment of the Supreme Court in *Hitendra Vishnu Thakur vs. State of Maharashtra*, 1994 (4) SCC 602.

6. I have considered the submissions made by the learned counsels for the parties. The requirement of a probate is contained in Clause 2.3 of Schedule II of the said Rules and relates to Rule 6(vi) of the said Rules. Rule 6(vi) and Clause 2.3 of Schedule II of the Rules are quoted hereinbelow:

6. In the Principle rules, in rule 7,

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(vi) for sub-rule (8), the following shall be substituted, namely:-

“(8) In case, claimant is a legal heir or successor or administrator or nominee of the registered share holder, the claimant shall ensure to submission of self-attested scanned copy of all documents detailed in Schedule II of these rules online along with the Form No. IEPF-5:

Provided that in case of loss of securities held in physical form, he has to ensure to submission of self-attested scanned copy of additional documents detailed in Schedule III of these rules online along with the Form No. IEPF-5:

Provided further that the claimant shall submit in original all these documents duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim.”

Xxxxxx

Schedule II

Documents to be submitted to the Authority to register transmission of securities

2. Where the shares are held singly without nomination, the following documents in addition to the documents specified at paragraph 1 are required:

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2.3 For value of securities more than Rs. 2,00,000 (Rupees Two lakh only) per issuer company as on date of application: Succession certificate or probate of will or letter of administration or court decree, as may be applicable in terms of Indian Succession Act, 1925. (39 of 1925).”

7. Though the Rules were notified on 14.08.2019, in terms of Rule 1(3) of the Rules, Rules 6(vi) is expressly made to come into force with effect from 20.09.2019, which is quoted hereinbelow:-

“1. (3) The provisions of rule 6 (i), 6 (iv), 6 (v), 6 (vi), 6 (vii) and 6 (viii), shall come into force with effect from the 20th day of September, 2019.”

8. Apart from the fact that the above Rule has been expressly made to be applicable only with effect from 20.09.2019, when the application of the petitioner already stood filed and was pending, Rule 2.3 itself indicates that the same shall be applicable as on the date of the application. As held by the Supreme Court in *Hitendra Vishnu Thakur* (Supra), a Rule which creates a disability, even though procedural in nature, can only have a prospective effect. Therefore, the said Rule would not apply to the facts of the present case and to the application of the petitioner. The application of the petitioner had to be considered by the respondent no.1 in accordance with the Rules as were prevailing on the date of the application.

9. It is not the case of the respondent no.1 that as on the date of the application, the petitioner was required to produce probate of the Will or a court decree in its favour. In that event, the insistence of the respondent no.1 on the petitioner producing probate of the Will or a Decree in terms of Clause 2.3 of Schedule II of the Rules cannot be sustained.

10. As there is no other objection to the release of the shares and the dividend in respect thereof in favour of the petitioner, the respondent no. 1 is directed to release the same to the petitioner within a period of four weeks from today.

11. I may also note that the learned counsel for the petitioner made submissions on the validity of Clause 2.3 of Schedule II of the Rules. This question of law is left open to be adjudicated in appropriate proceedings.

12. The petition is allowed in the above terms. There shall be no order as to cost.

13. Copy of the order be supplied to the learned counsels for the parties on the e-mail address provided.

 NAVIN CHAWLA, J

DECEMBER 18, 2020/rv