



SUMMARY REPORT

Speaker Series: 'Legal Awareness on Will Writing'

Saturday, 31st August, 2019

10:00 a.m.- 12:30 p.m.

K.C. Law College, Churchgate, Mumbai

Mumbai First and K.C. Law College collaborated on the Speaker Series on Legal Awareness on Will Writing, the first edition of the Speaker Series, 2019

The event began on a Saturday morning, with opening remarks by Dr. Neville Mehta, the CEO of Mumbai First, who introduced the speakers- Advocate Anil Harish (partner of DM Harish and Company and former president of the Hyderabad Sind National Collegiate Board), Advocate Siddhartha Shah (Senior Counsel to the Government of India), Mr. Kedar Bhatt (Associate Director of Anand Rathi Wealth Services Limited) and Dr. Kavita Lalchandani, the principal of KC Law College and a member of the Mumbai District Legal Services Authority of the Government of Maharashtra.

Following the lighting of the lamp, Vice Principal Dr. Bindu Variath gave a brief introduction of KC Law College, addressing its history, teaching and co-curricular activities and its esteemed alumni at many levels of the Indian judiciary and government. She proudly noted that the HSNC board has now been granted special university status, to the applause of the audience. She then also introduced Mumbai First, as a non-profit think tank with the mission of making Mumbai a better place to live, work and invest. She noted Mumbai First's achievements such as the adoption by the Government of Maharashtra of the Concept Plan of the forward-looking vision for this region, and in institutionalizing the Empowered Committee chaired by the Chief Secretary of Maharashtra, and the Citizens Action Group chaired by the Chief minister and co-chaired by Mumbai First.

Dr. Mehta then invited the principal, Dr. Lalchandani, to welcome the participants to this event at her college. She introduced the topic of Will Writing as one with a lot of relevance in terms of the issues that surround litigation on Wills, and its importance for the smooth transmission of property to heirs.

Mr. Mehta spoke on the background of Mr. Kedar Bhatt of Anand Rathi Wealth Services for the audience, beginning with his extensive array of professional

certifications and his experience in the rural sector and in banking. His expertise lies in handling mid- and small-size promoters and professionals, investment advisories, and he has been the Associate Director at Anand Rathi for twelve years, with clients across borders, in sectors of the economy such as the pharmaceuticals, IT, construction, automobile industries and more.

Mr. Bhatt began his speech by very kindly commending the Mumbai First Team for their work in community service, and exclaimed that this ought to be the first of many events. He noted that the topic of wills is somewhat 'taboo' in India due to inhibitions on speaking about death, and said that it was fortunate that a talk on this topic was taking place. 95% of the people that Mr. Bhatt meets don't have wills, and run the risk of leaving their estates behind without future plans.

When there's no will, India's succession laws are consulted, and the transmission of assets will not occur according to the deceased's preferences. There are three different succession acts, the 1956 Hindu Succession Act, the 1925 Indian Succession Act and the Sharia Law. Each of these is applicable for different religious communities, and has different specifications on how estates should be divided between spouses, children, parents and siblings. Since we work hard to earn our money, it's only prudent that we have some control over the transmission.

The lack of a will can cause unwanted distress, and a truly sad situation for the family of the deceased where they must prove their legal rights in court. This turns into a financially strenuous situation for the legatees, where costs can approach 3-5% of the property value. Bitter feuds over legal assets often tend to portray the clashing parties as villains fighting for their shares, but perhaps we should redirect our scrutiny towards the person who passed away without a will.

A will really is a simple solution for estate planning, for transmission as per your wishes. This occurs with almost no transmission losses too, and makes the issue less stressful for family members. It can also cover sensitive issues like the guardianship of minors, especially in the absence of natural guardians. It also serves the function of appointing executors, who oversee the correct implementation of the will. It is preferable that the executor is someone who understands the family and the relevant social dynamics, but in the absence of an executor, the courts will appoint one. One should also remember to register a will to give it legal value, as is important for the future and its implementation.

Mr. Bhatt also noted a few do's and don'ts for will writing, the first of which was to keep the transmission plan uncomplicated. Part of this is the investment advisor's job to explain and simplify things, and they should also be able to structure your wealth in such a way that sufficient liquidity is accessible in any urgent situation. Crucially, they should also do all of this in a transparent manner that the investor can understand. Also essentially, the level of taxation and risk should be calibrated to assure the optimal post-tax returns.

Mr. Bhatt also offered his personal opinions on a few mistakes he perceived in investment. The first was that we ought to avoid linking investments and insurance in products such as Unit-linked Insurance Plans, owing to their cost structure and the complexity added. The second was to avoid real estate debentures due to their

illiquidity. One should also avoid portfolio management services due to their high risk and unfavorable track record, and private equity funds due to the lack of information they provide in the public space.

He espoused an objective-led approach where one can invest in a strategy rather than a product, and thus manage wealth like 'a CEO'. For this the investor ought to set long-term goals and have a well-planned strategy, with backup options also available. The strategy should be tested with simulations and stress tests, so that one can understand both the best and worst case scenarios for the portfolio, and their respective probabilities. In practice, the monitoring and reviewing of strategies at regular intervals is important, but changes should only be made if truly necessary.

He spoke further on the Anand Rathi approach, in terms of keeping risk with a maximum standard deviation of 7%, so that even in the worst case the client is seeing returns in line with fixed deposits, which were the opportunity cost for the client for choosing to invest with Anand Rathi. He also pointed out their policies on no lock-in and the consistency of returns. He ended with talking about the balance sheet approach, whereby the strategy for a client is designed by first understanding their entire balance sheet

Following this, Mr. Mehta noted how after all our hard work, it is only right that our beneficiaries can receive our wealth simply and without complications. Following this, he invited Adv. Siddhartha Shah, who would speak on drafting a will and the different types of wills. He has a history of handling complex litigations for the Union of India, and all kinds of suits and petitions, including dispute resolution, international divorce and criminal litigations. He has also served as a panel member for Lok Adalats and Maha Lok Adalats.

Adv. Shah began his address by noting that wills are a vast area of law, and that he would begin by speaking about aspects of the 1925 Indian Succession Act, and how we can simplify a will, what statutes are relevant and how the will can properly channel the intention of the deceased. Section 56 of the Act defines the will, and specifies how it is to be written and enforced, and how it should be probated and tested by a High Court. The will is a simple legal document stating the intention of the 'party' (the writer), which can be anybody who is a major and of sound mind. It can be written on any ordinary piece of paper. To begin, a will should note all the properties to be bequeathed to the legal heirs.

Section 63 of the Indian Succession Act is very important for the execution of wills, and specifies that the signing of the will should occur before two attesting witnesses who will also sign the will themselves, and their presence should be provable. Section 67 specifies that if there is any challenge regarding whether the testators signed the will, an expert can be consulted to verify the signatures by their handwriting. Sections 59 and 63 say that it should be proven that it is the last will, and it will be treated as any other legal document. The will must also be designed in a systematic way.

A will ought to be dated, and include the personal details about the executor(s) and of the assets (whether moveable or immovable). A significant new change in the

current scenario is that even passwords, security pins and intellectual property rights can be in a will.

Wills can only be written, and there is no provision for oral wills. Furthermore, lawyers should simplify things for ordinary people, and be lucid and clear. Wills are important so that legal heirs are not troubled after the testator's death. Different wills can be executed for different properties, and wills can also be altered and revoked. This makes the testator able to give his property to anyone who he wishes to, and clarify in detail where the property will go after death.

Registration of wills is not mandatory, but it is still advisable to go before a registrar in anticipation of any future legal challenges to the will. We ought to see wills not just as a complex legal issue, but as a way to simplify matters for the next generation, and ensure that properties can be bequeathed to the right place.

Dr. Mehta thanked Adv. Shah, and reiterated how the testator ought to be of sound mind, and have the will witnessed and registered. We ought to do this for posterity, since it is inappropriate for someone to leave behind complications after their passing. Before inviting Adv. Anil Harish, Dr. Mehta shared an anecdote of how as a child, he would regularly read about Supreme Court Lawyer DM Harish, an "illustrious legal legend". He went on to express gratitude for the presence of the illustrious son, Adv. Anil Harish, who is a partner of DM Harish and Company, and chairman of the Sindh group of colleges, who were recently granted the special university status. He is also on multiple managing committees of many offices, and has written several articles in most major newspapers and journals. He also thanked Adv. Harish for gracing a Mumbai First event for the second time, following his kind contribution to Mumbai First's event on Judicial Pendency.

Adv. Harish spoke on wills and probates, and began by noting that the topic of wills has proven controversial in the media, and recounted the case and legal battles that ensued when the Birla Corporation was bequeathed to R.S. Lodha. He defined wills as per Section 2(h) of the Indian Succession Act, where wills are the legal declaration of testator intention as to his property. The Act helps determine who will be the successor for assets, even in the case of intestate succession, and for various religions. Notably, the testator should not be ill or in a state of intoxication when they write the will.

Sometimes wills can coincide, and Adv. Harish gave the example of non-residents with domestic and foreign assets, wherein the manner of succession for different assets could be specified in different wills.

Essentially a will should be signed and have two or more witnesses, but in practice the signing can happen in front of different witnesses at different times. He said that legatees or close family ought not to be witnesses, to avoid allegations of bias or influence. Also, the will should be clear, whether written, typed or put down in any other manner. Registration of the will adds to its evidentiary value, but it isn't critical to do it immediately; it can be postponed in case one anticipates alterations. Conditions can be attached to the will, such as disbursing certain assets only if a

legatee fulfills a certain expectation. Moreover, the legatee can reject 'onerous bequests, such as property that is inaccessible or involved in litigation.

Codicils explain, alter or add to the dispositions of earlier wills. This is an alternative to making a new will, and it will prevail over the will wherever it contradicts the original document.

Wills can be challenged on the grounds of a lack of execution or of the testator's intention, capacity, knowledge and approval, or if undue influence was exercised over the testator.

Adv. Harish noted the situation of bequeathing tenancy rights, and pointed out how one cannot transfer or transmit a property they do not own. Instead, one must specify a 'wish' for their tenancy rights to go to someone else.

Adv. Harish also referred to forfeiture clauses in wills, whereby if a legatee disputes or initiates legal proceedings against the will, they will be debarred from the estates in the will. Moreover, bequests to an executor can be shaped so that the executor only receives their share if they do their duty as executors.

He spoke about probates, whereby a will is authenticated by court so that the executor can act upon its instructions.

Finally, Adv. Harish spoke about Living Wills or 'Advanced Directives', and the right to die with dignity. These are now allowed in India, whereby the testator can specify that medical treatment should cease at a certain point or condition.

He encouraged people to plan their succession, noting "just the fact that you make a will, does not mean that you are over the hill".

After a felicitation of speakers, there was a question and answer session that was moderated by Dr. Mehta. Various students and citizens put forward their interesting queries, with speakers responding to these queries. The session concluded with Dr.Mehta expressing the vote of thanks along with exchanges of gratitude and farewell.

Questions and Answers (edited):

Q: During the implementation of a will, the beneficiary may find that not all assets of the deceased have been included. What is the simplest way to acquire them?

A: Items that are easily accessible, such as jewelry or valuables at home, can be transmitted as per family consensus, without the involvement of a court. However assets such as bank accounts or shares require the probate from the High Court, for the will to be amended.

Q: What if there is no proof that an executor has agreed to be an executor?

A: Firstly, the will ought to clearly define whom the executor(s) is/are. The executor's acceptance of this role is very important. Without the executors consent to his duty, the will cannot be implemented. If an executor is unavailable or unwilling to fulfill this role, the beneficiaries can approach the court, and the court can appoint an administrator to carry out the executor's duty.

Q: Who is responsible for paying the fees for probate?

A: Generally, beneficiaries will move the court to get probates done.

Q: Do codicils need witnesses?

A: Yes, but they can be different witnesses from those for the will. Affidavits from all the respective witnesses of the will and the codicil are necessary.

Q: When I make a will and have multiple properties across the country, which court ought to be approached? Will the will's execution happen in the state of death or the state of permanent address?

A: The fee cap for Mumbai petitions is 75,000 rupees, and if any of the assets are located here, you can benefit from this low-capped fee. Also note that Indian authorities will not recognize a foreign probate, and thus the beneficiary will require a separate probate for assets in India.

Q: If I want a certain portion of my assets to be held in a trust for people such as minors, can an executor create this trust?

A: You can appoint a custodian for giving the property to minors, or you can also trigger a private trust creation for the minors (planned by the executor)

Q: Why not make gift deeds before death, to avoid potential legal hassles regarding inheritance?

A: Gift deed regulations vary across the gamut of assets, and there is also a 6-7% duty on some gift properties.

Q: Are living wills similar to the practice of euthanasia?

A: Euthanasia cases are similar but not the same as 'living will' issues. Euthanasia is a decision undertaken by someone else to end a suffering person's life, but living wills are the author's own decision on a dignified end.

Q: My friend has three different wills, all undated and unsigned. She says she will only decide which one to sign right before her death.

A: These are only drafts, not actual wills until they are signed and witnessed. Without signatures and witnesses, they will remain drafts if this person dies or is in a state where they cannot sign before death.

Q: How can Emergency Room personnel account for 'living will' provisions before administering life-saving treatments?

A: The Supreme Court has issued a directive that Emergency Room personnel may give life-saving treatments if they are unaware of 'dignified death' provisions in a will. It was also noted that in Singapore, there is a public multilingual register for such 'dignified death' measures. The Emergency Room can consult the register before embarking on a course of action.

Q: If the will is registered, is there still a probate involved?

A: Yes. There may be multiple wills, and probates are usually required.

Q: What liabilities are legal heirs liable for?

A: A beneficiary is only liable for the amount they receive.

Q. What provision do succession laws have for digital signatures?

A: The Indian Succession Act does not provide for digital signatures.

Q. You mainly addressed assets that can be liquidated. However, can you bequeath dogs and children?

A. You can bequeath dogs, but not children.