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

+ **FAO 366/2015**

PRADIP GHOSH

..... Appellant

Through: Mr. Santosh K. Sethi and Ms. Surabhi
Sharma, Advocates

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: Mr. Premsagar Pal for Mr. Rishikesh
Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

10.12.2015

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1. This is an appeal directed against the order dated 17.08.2015, passed by the learned Additional District Judge.

1.1 By virtue of this order, the appellant's application for condonation of delay in furnishing the administration bond and the surety bond was dismissed.

1.2 The appellant herein (i.e. Mr. Pradip Ghosh) was granted probate by a judgment dated 20.11.2002, passed in Probate petition no.312/2001.

1.3 To be noted, the initial probate action was filed by the brother of the appellant herein. The probate petition was therefore, titled as : Deepak Ghosh Vs. State and Ors. The appellant herein, was arrayed as respondent no.2 in that petition.

2. It appears that during the pendency of the proceedings, Mr. Deepak Ghosh passed away, and ultimately, the probate was granted in favour of the

appellant herein, vide the aforementioned judgment.

2.1 This probate was granted as is usually the case subject to valuation report obtained from the Collector, with respect to the immovable property involved in the matter. The immovable property involved in the probate action is described as : 14-A/15, W.E.A. Karol Bagh, New Delhi.

2.2 The appellant herein, was also, required to furnish an administration bond and a surety bond.

3. The record shows that valuation report was generated on 28.04.2014. By virtue of this report, the aforementioned property was valued at Rs.1,53,55,385/-. The appellant herein, also, filed an administration bond, which is dated 25.09.2014, a copy of which is appended at page 29 of the paper book. A surety bond of even date i.e. 25.09.2014 was executed by one Mr. Biman Mukherjee; a copy of the same is appended at page 27 of the paper book.

3.1 The appellant herein, paid the court fee in the first instance, amounting to Rs.6,14, 240/- on 09.09.2014, followed by deposit of additional court fee amounting to Rs.1500/-. The said court fee was deposited on 06.02.2015.

3.2 The steps with regard to the deposit of court fee were taken by the appellant herein pursuant to proceedings held before the ADJ on 23.08.2014.

3.3 Since, there had been a considerable delay in filing the administration bond, the surety bond and in the deposit of requisite court fee, an application for condonation of delay was preferred by the appellant herein.

3.4 The learned ADJ, however, rejected the application for condonation of delay and therefore, the appellant, has preferred the instant appeal.

4. Notice in this appeal was issued on 20.10.2015 when, the State, was

represented by Mr. Sachin Nahar, advocate. Today, Mr. Premasagar Pal appears for the State.

5. Based on the record, counsel for the parties have addressed arguments in the matter.

6. The learned counsel for the appellant says that once an order was passed on 23.08.2014 by the learned ADJ directing the appellant herein to deposit the requisite court fee within a given time frame, that is, four weeks, the subsequent order is both unfair and unreasonable.

6.1 The learned counsel for the appellant says that though there is a delay in taking requisite steps, the State, has not lost in terms of revenue as the requisite court fee has been deposited.

7. On the other hand, the learned counsel for the State says that the order dated 23.08.2014 only directed deposit of court fee, and that there was no direction to the effect that the administration bond and the surety bond will be accepted.

8. I have considered the submissions of the counsel for the parties.

9. There is no doubt that the appellant herein showed alacrity in taking requisite consequential steps in the matter, after he had obtained a probate in his favour.

9.1 However, notwithstanding the aforesaid, the record as placed before me, shows that the appellant has deposited the entire court fee. In that sense, the State, has not lost anything, on account of revenue. Since, probate was granted in favour of the appellant, according to me, the trial court could have condoned the delay as no prejudice was caused to the State. While condoning the delay, one of the aspects, which is required to be examined, by the court is, as to whether or not the delay has prejudiced the opposite

party. As indicated above, the State, does not stand to lose if, the delay is condoned.

10. Accordingly, the impugned judgment is set aside. The delay is condoned. The administration bond and the surety bond shall stand accepted. The appellant will be issued a certificate in terms of Schedule VI of the Indian Succession Act, 1925, within four weeks from today, upon fulfilment of requisite formalities, if any.

10.1 The appeal be consigned to record.

11. Dasti to parties.

RAJIV SHAKDHER, J

DECEMBER 10, 2015

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