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

+ **CM(M) 276/2016**

KRISHNA KARANWAL

..... Petitioner

Through

Mr.A.K.Singhla, Sr. Adv. with Mr.
Abhimanyu Singh Khatri and
Mr.Abhishek Khanna, Advocates.

versus

POONAM AHLUWALIA

..... Respondent

Through

None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **26.04.2016**

C.M. No.14266/2016 (exemption)

Exemption is allowed subject to just exceptions. Application disposed of.

REVIEW PET No.197/2016

The petitioner is seeking review of the order dated 21.3.2016. There are two contentions argued in this review petition. The first submission that the order noting that the defendant did not claim himself to be a legal representative of the deceased is an incorrect finding. This is not the case of the petitioner/defendant. His second submission is that in the replication filed by the plaintiff, he had admitted that the property of the deceased was her own self-acquired property. In view of the aforementioned two submissions, the impugned order endorsing the order of the Trial Court dismissing his application under order VII Rule 11 of the CPC calls for a review. Additional

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submission being that he had premised his case on the last provision of Order XLVII. There is sufficient reason for seeking a review. Learned senior counsel for the petitioner has in support of his arguments placed reliance upon a judgment of the Apex Court reported as (2009) 14 SCC 663 Inderchand Jain (dead) through LRs Vs. Motilal (dead) through LRs. Submission being that even if there is no error apparent on the face of the record or there is no lack of due diligence but if there is a sufficient reason, the order may be reviewed and the words “sufficient reason” in Order XLVII Rule 1 of the CPC are wide enough to include a misconception of fact or law by a court or even an advocate.

The arguments of the learned senior counsel for the petitioner have been appreciated.

The second submission of the learned senior counsel for the petitioner shall be dealt with first. While dealing with an application under Order VII Rule 11 of the CPC, the settled proposition of law is that it is only the averments which are made in the plaint which have to be gone into. Even as per the case of the petitioner the admission was made by the plaintiff that the property is self acquired property of the deceased only in the replication. Even as per his case this admission was not a part of the plaint. That being a factual position, this averment made in the replication would not be relevant for dealing with an application under Order VII Rule 11 of the CPC. The first submission of the petitioner that the order (impugned) had noted that the defendant did not claim himself to be a legal representative of

the deceased is again based on wrong premise. What the defendant may or may not plead in his written statement cannot be relevant for the purposes of deciding an application under Order VII Rule 11 of the CPC. This submission is thus again not relevant for the purpose of dealing with an application under Order VII Rule 11 of the CPC as the defence of the defendant is not a matter in issue while dealing with such an application.

The order under review has noted all the contentions sought to be raised today. The provisions of Sections 15(1) and 15(2) of the Hindu Succession Act had been dealt with in detail. The impugned order on no count calls for a review.

Petition is dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

APRIL 26, 2016

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