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

Date of Decision: September 19, 2016

+ **FAO 263/2014**

ASHA @ AYESHA Appellant
Through: Mr. Chetan Lokur & Mr. Nitish
Chaudhary, Advocates with
appellant in person

versus

STATE & ANR. Respondent
Through: Mr. B.S. Mann & Ms. Smita
Mann, Advocates

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGEMENT
(ORAL)**

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Impugned order dismisses appellant's application seeking revocation of grant of Letter of Administration granted vide order of 12th July, 2001. Appellant had filed application on 29th August, 2012 and while taking the period of limitation from the date of written statement i.e. 12th May, 2009, appellant's application seeking condonation of delay stands dismissed by trial court by holding that the medical record relied upon to seek condonation of delay consists of clinical reports only and it does not show that appellant had accompanied her daughter-in-law for medical treatment.

The challenge to the impugned order by learned counsel for

appellant is on the ground that the main stand of appellant of being ill advised by his previous counsel that there was no period of limitation, is not dealt with in the impugned order. It is submitted that even if the plea of illness of appellant's daughter-in-law is not taken into consideration, still, due to ill advice given to the appellant by previous counsel, the delay ought to have been condoned, as the delay was neither deliberate nor intentional. Thus, it is submitted that the impugned order deserves to be set aside and appellant's application seeking condonation of delay ought to be allowed and appellant's application seeking revocation of the Letter of Administration granted vide order of 12th July, 2001 needs to be heard on merits.

On the contrary, learned counsel for second respondent submits that the impugned order is perfectly justified and there is no merit in this appeal, as the name of counsel, who had purportedly given ill advice, is not disclosed, nor affidavit of the previous counsel has been filed. It is pointed out that during the period of three years, appellant had filed many cases against second respondent and so, the plea of appellant being busy in attending to her ailing daughter-in-law is an afterthought and trial court has rightly negated it.

It is also pointed out that trial court in the impugned order has rightly observed that appellant was attending to the litigation at Tis Hazari Courts and in the office of SDM or before this Court and so, the medical ground taken by the appellant is of no avail. Reliance is placed by learned counsel for second respondent upon Supreme Court's decision in *Pundlik Jalam Patil (Dead) by LRs v. Executive Engineer, Jalgaon Medium Protect and Another*, (2008) 17 SCC 448 to submit that a party

taking a false plea cannot get rid of the bar of limitation. Reliance is also placed upon a decision of Single Bench of this Court in *Mahinder Kaur & Anr. v. Pamela Manmohan Singh & Ors.*, 2015 V AD (Delhi) 277 to submit that good faith is *sine qua non* for availing of the benefit under Section 14 of *the Limitation Act, 1963*.

Upon hearing and on perusal of impugned order, the material on record and the decisions cited, I find that the principal ground taken by appellant to seek condonation of delay was the ill advice of the previous counsel. To say the least, impugned order does not deal with the principal contention raised by appellant's counsel. The averments made in support of this contention in the application seeking condonation of delay are contained in paragraph No.4 of the application filed by appellant before trial court. Paragraph No.4 of the aforesaid application reads as under: -

“4. That with utmost respect it is submitted that the Petitioner had advised to state that there is no period of limitation for the grant of probate. Article 137 of the Limitation Act does not apply to the application for probate of letter of administration. Likewise there is no period of limitation for revocation of the probate. Article 137 of the Limitation Act does not apply to the application for revocation of probate.”

The corresponding paragraph No.4 of the reply to aforesaid application reads as under: -

“That the contents of the para 4 of the application are wrong and are denied. It is denied that there was no

intentional or deliberate delay on the part of the petitioner for filing the application for revocation of probate or that there is sufficient cause for condoning the delay.”

No doubt, name of the previous counsel is not disclosed, but this objection was not taken by respondents’ counsel in the reply and so, now respondents’ counsel cannot be now heard to say that the name of the previous counsel is not disclosed or that the affidavit of the previous counsel is not forthcoming. Otherwise also, judicial notice can be taken of the fact that in a situation like the one in hand, no counsel would give affidavit pleading ignorance of law.

It is quite evident that even the respondents’ plea of appellant litigating in various Forums is not supported by any assertion in the reply to the delay application and so, no notice of it can be taken now. The delay of 107 days in filing the application does not appear to be intentional or deliberate. It is not shown as to what prejudice is caused to the contesting respondents on account of delay occasioned. Reliance placed upon decisions in *Pundlik Jalam (supra)* and *Mahinder Kaur (supra)* is of no avail because there is no basis to conclude that the plea of ill advice by previous counsel is false one.

In the facts and circumstances of this case, it is deemed appropriate to give an opportunity to appellant to contest the application on merits, as for the delay occasioned, appellant can be put to terms. Consequentially, impugned order is set aside and appellant’s application seeking condonation of delay of 107 days is allowed subject to costs of ₹10,000/- to be paid to respondent No.2 within four weeks. Upon payment of costs

to second respondent within the stipulated time, appellant's application seeking revocation of grant of Letter of Administration be expeditiously decided by trial court in accordance with the law.

With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 19, 2016

r/s

