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

+ CM(M) 737/2016 & CM No.27755/2016

INDRA SHARMA & ORS Petitioner
Through Mr.Inderpal Khokhar, Adv.

versus

THE GOVT OF NCT OF DELHI & ANR Respondent
Through Mr.Manmeet Singh Arora, Adv. for
R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **04.08.2016**

1. By the present petition the petitioner seeks to impugn the order dated 18.5.2016 by which order the application filed by the petitioners under Order 22 Rule 3 CPC was dismissed. A Probate Petition was filed before the trial court under section 263 of the Indian Succession Act, 1925 seeking revocation of grant of probate/letters of administration. The petitioner in the main petition before the trial Court died on 22.12.2011. The application was filed on 22.8.2012 i.e. after a delay of five months from the date of expiry of the limitation. The application that was filed under Order 22 Rule 3 CPC was titled as being under Order 22 Rule 3 CPC read with Section 5 of the Limitation Act to bring on record the LRs of the deceased Shri Jagan Nath Sharma.

2. The Court by the impugned order noted that the only reason given for not filing the application in time was that the petitioners/LRs of the

petitioners before the trial court are residents of Ludhiana, Punjab and were not aware of the filing and pendency of this revocation petition filed by the deceased. The trial court noted that Shri Manoj Sharma, one of the petitioners herein had filed an affidavit by way of evidence on behalf of the revocator at the time when he was alive as his Special Power of Attorney. The affidavit was sworn on 22.12.2011 i.e. on the same date on which the revocator Shri Jagan Nath Sharma expired. Hence, Shri Manoj Sharma was very well aware of the pendency of the present petition. Yet, a stand was taken in the application that the petitioners were not aware of the pendency of the present revocation petition. Thus the grounds stated in the application for delay stood negated. The trial court dismissed the said application. The trial court also noted that the application has been filed under Order 22 Rule 3 CPC whereas it should have been under Order 22 Rule 9 CPC.

3. Learned counsel for the petitioner has pointed out that the mistake in the application filed under Order 22 Rule 3 CPC read with Section 5 Limitation Act was a bona fide error. He submits that the delay of five months was on account of the fact that the petitioners are based in Ludhiana.

4. In my opinion, there is no doubt that a factual error has taken place in the application that was filed by the petitioner. However, it appears to be more on account of lackadaisical drafting of the application/lack of vigilance on the part of the petitioner. The petitioner should not on this ground be non-suited from continuing the revocation petition filed by their late father under section 263 of the Indian Succession Act.

5. Advance copy of the petition has been served on the counsel appearing for the respondent. Counsel for respondent No.1 has entered

appearance. Proof of Speed Post receipt sent to counsel appearing for respondent No.2 has also been placed on record. However, none is present for respondent No.2.

6. In view of the above, the present petition is allowed. The impugned order dated 18.5.2016 is set aside subject to payment of costs of Rs.20,000/- payable to respondent No.2.

7. The matter is remanded back to the trial Court to be listed on 19.9.2016 for further proceedings including service of respondent No.2.

8. The present petition stands disposed of.

JAYANT NATH, J

AUGUST 04, 2016

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