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

+ **FAO 310/2016**

OM PRAKASH SHARMA Appellant
Through: Mr. Vivek Kishore and Mr.
Hamanshu Kapoor, Advocates

versus

STATE Respondent
Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
15.07.2016

C.M.No.24718/2016 (Exemption)

Allowed subject to all just exceptions.

FAO 310/2016

Impugned judgment of 28th April, 2016 dismisses appellant's probate petition on the ground of concealment of appellant earlier filing a similar probate petition, which was unconditionally withdrawn.

At the hearing, learned counsel for appellant draws the attention of this Court to Annexure-7 to submit that infact appellant had sought permission to file fresh petition while withdrawing the earlier one and due to bona fide mistake, appellant had not sought that liberty on 14th November, 2014 when he had made the statement before the trial court seeking permission to withdraw the earlier petition.

The order of 14th November, 2014 permitting withdrawal of earlier petition on the statement of appellant nowhere discloses that any liberty was granted to file fresh petition. In such a case, it was incumbent upon appellant's lawyer to have either sought review of the order of 14th November, 2014 and if review was not granted, then he ought not to have filed the second petition without liberty.

At the hearing, it was put to learned counsel for appellant as to what prejudice appellant suffers and it was stated that even by intestate succession, appellant would get his due share. Thus, appellant suffers no prejudice on account of lapse on his part of not seeking the liberty to file fresh one.

Consequently, finding no illegality or infirmity in the impugned order, this appeal is dismissed.

(SUNIL GAUR)
JUDGE

JULY 15, 2016

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