

\$~2

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

+ **FAO(OS) 265/2015**

SMT KAMAL SETHI

..... Appellant

Represented by: Ms.Shikha Goyal proxy for
Mr.R.L.Kohli, Adv.

versus

SH S K SETHI

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

16.02.2016

1. Impugned order has allowed interim applications filed for restoring testamentary case No.29/2003 which was dismissed in default.
2. To recompense the appellant cost in sum of ₹25,000/- is directed to be paid to each of the respondents. Appellant would therefore be receiving ₹25,000/-.
3. Impugned order is not a judgment as per law declared by the Supreme Court in the decision reported as (1981) 4 SCC 8 Shah Babulal Khimji Vs. Jayaben D. Kania.
4. That apart, it is settled law if a suit is dismissed in default, fresh suit can be filed provided limitation has not expired.
5. Pertaining to a Will the settled law is that the testamentary document is a call by the executor to the future to execute the same for the reason the estate of the deceased is held by the executors as a trustee. It is the duty of the future to execute the trust of somebody who has gone into the realm of the past.

6. The petitioner of testamentary case No.29/2003 can always file a fresh petition seeking probate of the Will in question.
7. The appeal is dismissed
8. No cost.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 16, 2016
‘ga’