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

+ CM(M) 1210/2016 & CM No.43921/2016

SUNIL THAKUR & ANR

..... Petitioners

Through

Mr.Bharat
Advocates

&

Mr.B.K.Saini,

versus

STATE

..... Respondent

Through

Mr.Anuj Aggarwal, ASC with
Mr.Nitin Jain, Advocate for GNCTD

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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07.12.2016

CM Nos.43921/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) 1210/2016

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 17.10.2016 by which their application for condonation of delay of seven years in complying with the order of granting letters of administration annexed copy of Will was dismissed.
2. The petitioner applied for probate of the Will dated 24.07.1994 after demise of his father Sh.Gian Chand. The petition was allowed on 04.04.2008 with the direction that the letters of administration annexed with the copy of the Will be granted in favour of the petitioner subject to his furnishing requisite court fee, administration bond with one separate surety

bond in terms of the valuation report filed on record and an inventory of the property of the deceased was to be exhibited in the court within six months and statement of account be filed within one year.

3. It appears that if the conditions imposed by the order dated 04.04.2008, the petitioners have filed court fee, administration bond and one surety bond and what was not done was to prepare inventory of the property of the deceased and also the statement of account.

4. As there is a delay, the petitioner has filed an application for condoning the delay. In the application, it was stated that his mother is about 80 years old and has been afflicted with various old age related ailments. The applicant himself suffered heart attack in 1998 and has been under treatment since then. It is only when the brother-in-law of the petitioner Sh.P.C.Verma, who stood surety for the petitioner called upon the petitioner to have the endorsement on his property cancelled, the petitioner contacted his advocate to do the needful. Then he realised that certain conditions had not been complied with as per order dated 04.04.2008. It is stated that the advocate had instructed his junior staff to do the needful but on inspection of the file it came to know that inventory etc. had not been filed. The advocate regretted the same saying that his clerk had left him some time towards the middle of 2009 and his junior had died. Hence, there has been a delay in compliance of the said requirements.

5. The impugned order has dismissed the application noting that there is an attempt to shift the burden to his counsel and his clerk.

6. The fact shows that the petitioner was careless and did not comply with the said conditions and realised the omission only after his brother-in-law has requested for cancellation of the endorsement.

7. In my opinion, an explanation has been given about delay, though certainly the petitioner could have been more vigilant. However, it would be very harsh to completely knockout the petition as no prejudice is caused to any other parties. In view of the above, subject to payment of cost of Rs.5,000/- payable to the Delhi High Court Legal Services Committee, the present petition is allowed. The application filed by the petitioner for condonation of delay is allowed and the delay is condoned. Other necessary consequences would follow up.

8. The petition stands disposed of.

JAYANT NATH, J.

DECEMBER 07, 2016/v