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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 53/2016
GURMUKH SINGH

..... Petitioner

Through Mr. Sanjeet Singh, Adv.

versus

STATE & ORS

..... Respondents

Through None.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.01.2016**

C.M. No.1940/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Application disposed of.

CM(M) 53/2016 & C.M. No.1939/2016 (stay)

The petitioner is aggrieved by the order dated 09.11.2015 vide which his petition seeking review of the order dated 12.03.2009 had been dismissed. The petitioner is aggrieved by the said finding.

Record shows that a probate petition had been filed by the petitioner titled as Gurmukh Singh Vs. State and Others bearing PC. No.338/2006/2003. That petition was dismissed on 12.03.2009. The Trial Judge had noted that the original Will had not been filed by the petitioner but only a coloured Xerox copy. The Trial Judge had further noticed that there appears to be an unjustifiable reason for not filing the original document on record. Against the dismissal of this petition, the petitioner had filed an appeal which has been disposed of by a Bench of this Court

on 27.10.2010. The Court had noted that the petitioner is granted liberty to file a review petition before the learned Additional District Judge and the original Will is permitted to be filed and placed on record of the learned Additional District Judge. The appeal was disposed of in the above terms.

Pursuant to this direction, the petitioner had filed a review petition before the concerned Court which had been declined by the impugned order.

The parameters of review are strict and compliance has to be adhered to the parameters contained within the said statutory provision. Unless there is an error apparent on the record of the case or a fact which was not available to a party inspite of due diligence, a review petition is not maintainable. A review is not in the nature of an appeal; it has to be guided by the Statute.

Record shows that admittedly the original Will was with the petitioner at the time when he had filed the probate petition; it was available with him even at the time when he had led his evidence; he had however chosen to produce the coloured photocopy of the Will; submission being that the original Will had been given to the counsel for the petitioner who had inadvertently not produced the same in the Trial Court. Even presuming this submission of the learned counsel for the petitioner is correct, nothing prevented the petitioner (an educated man) from asking his lawyer to produce the Will; this is a clear case where the petitioner has either chosen not to produce the so called Will deliberately and intentionally or it is a case of gross negligence.

Be that as it may, noting that the original order (dated 12.03.2009)

had recorded that no explanation was given by the petitioner why the original Will has not been produced before the Trial Court, it being argued today that the original Will was with the lawyer and that is why inadvertently it was not produced (as is the vehement submission made before this Court), is also not the argument recorded in the order dated 12.03.2009.

The impugned order had been passed strictly in accordance with law and within the parameters of review. In this background, the impugned order calls for no interference. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 19, 2016

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