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

+ W.P.(C) 404/2016

SUBE SINGH (DECEASED) THROUGH LRS & ORS

..... Petitioners

Through V.P.Dabas, Advocate.

versus

DHARUV PRAHLAD & ORS

..... Respondents

Through Mr.Neeraj Sharma, Advocate for R-1.
Mr.Devesh Singh, ASC for R-3,R-4
and R-5.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **01.09.2016**

Petitioner is aggrieved by the order passed by the Financial Commissioner dated 01.9.2015 which has endorsed the finding returned by the Deputy Commissioner dated 18.8.2012. Vide order dated 18.8.2012, the Deputy Commissioner was of the view that the appellant Sube Singh having expired on 15.9.2007 and no application having been filed for impleading his legal representatives till 21.7.2012 no ground was made out for allowing the aforementioned application and thus was of the view that the appeal stands abated. The Financial Commissioner in revision had endorsed the finding returned by the Deputy Commissioner. He was also of the view that this order of the Deputy Commissioner was not liable to be interfered

with as there appeared to be justifiable explanation given by the petitioner to explain the inordinate delay of almost five years in moving an application seeking impeachment of the legal representatives of the deceased who had died on 15.9.2007 and the application was filed on 21.7.2012.

The present writ petition has been filed assailing the order of the Financial Commissioner. The contention of the petitioner is that the petitioners who are the legal representatives of deceased Sube Singh are rustic/villagers and uneducated and do not know the nuances of law. Their submission is that at the time when their father Sube Singh had expired they were being represented by an advocate Mr.V.P.Rana. His vakalatnama is on record. Since Mr.V.P.Rana, Advocate did not take any interest in the matter, the petitioners had engaged another advocate Mr.G.S.Sharma, whose vakalatnama is also on record. The fact that the aforementioned advocates were appearing for the legal representatives of deceased Sube Singh is not disputed. It is also not in dispute that neither of the aforementioned advocates filed any application to bring on record the legal representatives of deceased Sube Singh. The submission of the petitioners that this is not their fault and the fault, if any, of the advocate should not be a penalty for the petitioners has been noted. This submission is further substantiated by the submission of the petitioner that before the Deputy Commissioner the petitioners were represented firstly by Sube Singh and thereafter after his death by Mr.V.P.Rana, Advocate for the appellant and thereafter on subsequent dates presence of Mr.G.S.Sharma, the second advocate has also been noted in various

orders passed (part of the record). Learned counsel for the petitioners in support of his submission that for the fault of the counsels a party should not be penalized has placed reliance upon a judgment of the Apex Court reported as 2005(2) RCR (Civil) 375 State of Nagaland Vs.Lipok AO. Submission is that the Apex Court in this judgment had noted the ratio that for the mistake of the counsel a party should not be penalized; if this mistake was bonafide the party should not suffer.

This Court re-notes the submission of the petitioners that the petitioners who are the legal representatives of deceased Sube Singh were rustic villagers and uneducated. Noting all these submissions as also the additional submission that this is largely a family dispute and the proceedings before the SDM related to a will executed by the grandmother of the petitioners in favour of the private respondent no.1 (Dharuv Prahlad), in the interest of justice, this Court deems it fit to set aside the order passed by the Financial Commissioner and allow the legal representatives of deceased Sube Singh to plead their case. The order of the Financial Commissioner is set aside. The matter is remanded back to the Deputy Commissioner who shall decide the pending application under Order 1 Rule 10 of the CPC in accordance with law. The Deputy Commissioner will endeavour to dispose of the application expeditiously.

No further orders are called for in this petition.

Petition disposed of.

INDERMEET KAUR, J

SEPTEMBER 01, 2016/ndn