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

+ W.P.(C) 5914/2014

SANJEEV MALHOTRA

..... Petitioner

Through: Ms. Mrinmoi Chatterjee, Advocate

versus

THE BRANCH MANAGER, ALLAHABAD BANK..... Respondent

Through: Mr. Amitabh Krishan, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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13.01.2017

CM APPL. 45154/2016 (for condonation of delay in filing the restoration application) and CM APPL. 34866/2016 (for restoration)

1. The present application has been filed by the petitioner praying *inter alia* for restoration of the writ petition that was dismissed in default vide order dated 28.03.2016.
2. Replies in opposition to these applications have been filed by the respondent. Counsel for the respondent states that the petitioner has not been able to explain the inordinate delay of 183 days in seeking restoration of the writ petition. He, however, submits that if the Court is inclined to allow these applications, the petitioner must be mulcted with costs.
3. The Court finds merit in the submission made by the counsel for the respondent that the explanation offered by the petitioner for seeking condonation of delay of 183 days in filing the restoration application is

rather sketchy. However, in the interest of justice, the present applications are allowed, subject to payment of costs of Rs.5,000/- to the respondent through counsel within two weeks.

4. The applications are allowed and disposed of.

W.P.(C) 5914/2014

1. The present petition has been filed by the petitioner praying *inter alia* for issuance of a writ of mandamus to the respondent/Bank, for permitting him to operate the bank locker that was hired by his deceased father, Mr.Harish Chander Malhotra with the Tilak Nagar Branch of the respondent/Bank.

2. Learned counsel for the petitioner submits that Shri Harish Chander Malhotra had expired on 29.01.2013 and his wife, Smt. Chand Rani Malhotra had predeceased him, having expired on 27.02.2010. Shri Harish Chander Malhotra is succeeded by a son and a daughter, namely, the petitioner herein and Smt. Meenu.

3. On the demise of his father, the petitioner and his sister discovered that he had not executed any will and nor did he make any nomination in respect of the subject bank locker. When the petitioner and his sister approached the respondent/Bank for having access to the locker, they were called upon to furnish a Succession Certificate.

4. In view of the aforesaid stand taken by the respondent/Bank, in November, 2013, the petitioner had filed a petition under Section 372 of the Indian Succession Act before the Administrative Civil Judge, Tis Hazari Courts in respect of his father's estate. The petitioner's sister has appeared in the said proceedings and had given her no objection for grant of a Succession Certificate in his favour. However, under some wrong legal

advice, the petitioner is stated to have withdrawn the said petition and has instead approached this Court by filing the present petition.

5. Having regard to the fact that the deceased, Mr. Harish Chander Malhotra had not made any nomination in respect of the subject bank locker, the respondent/Bank is justified in stating that without obtaining a Succession Certificate, the request of the petitioner to have access to the subject locker, is impermissible.

6. Counsel for the petitioner states that the present petition may be disposed of with liberty granted to the petitioner to either seek revival of the earlier petition filed under Section 372 of the Indian Succession Act, that was dismissed as withdrawn in May, 2014 or to file a fresh petition for the same relief, in accordance with law.

7. Leave, as prayed for, is granted. The petition is disposed of.

HIMA KOHLI, J

JANUARY 13, 2017

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