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

+ **FAO 142/2015**

SHYAM GUPTA & ORS

..... Appellants

Through: Mr. Rohit Aggarwal, &
Ms. Arunima Chatterjee, Advocates

versus

**THE STATE GOVERNMENT OF
NCT OF DELHI & ORS**

..... Respondents

Through: Mr. O P Aggarwal, Advocate for
Respondent Nos. 2 & 3

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **10.03.2017**

1. The appellant has challenged the orders dated 18th November, 2014, 2nd December, 2014 and 10th March, 2015 passed by the learned Trial Court.
2. The appellant filed a petition for probate of Will of late Hari Babu Gupta before the District Court. At the stage of final arguments, learned Trial Court vide order dated 2nd December, 2014 dismissed the petition in default as well as for non-prosecution and abatement. The appellant filed an application for restoration which was dismissed by the learned Trial Court on 10th March, 2015.
3. The Trial Court record has been perused. This court is of the *prima facie* view that the technicalities should not come in the way of substantial justice and, therefore, the appeal deserves to be allowed subject to payment of reasonable cost.
4. The appeal is allowed and impugned orders dated 18th November, 2014, 2nd December, 2014 and 10th March, 2015 are set aside subject to cost of Rs.25,000/- to be paid by the appellant to respondent nos. 2 & 3 within

four weeks from today. Cost be paid by means of one cheque of Rs.12,500/- in the name of respondent no.2 and another cheque of Rs.12,500/- in the name of respondent no.3 and same be delivered to learned counsel for respondents no.2 & 3 within four weeks from today.

5. The appellant is granted four weeks time to file an application for substitution of legal heirs of deceased respondent no.4 before the Trial Court. The delay in seeking substitution is condoned. The reply to the substitution application be filed within a period of three weeks from the date of receipt of copy of application from the appellant.

6. List before the Trial Court on 16th May 2017 when the Trial Court shall fix date(s) for hearing substitution application and final hearing. Considering that the appellant had delayed the proceedings, learned Trial Court shall ensure that no unnecessary adjournments are granted to the parties in this matter. Learned counsels for the parties agree not to seek any unnecessary adjournments before the Trial Court.

7. Learned counsels for the parties have noted down the date of hearing before the learned Trial Court and they waive off any separate notice to be issued to them for appearance.

8. The Trial Court records be returned back forthwith.

9. Copy of this order be given *dasti* to learned counsels for the parties under signatures of Court Master.

J.R. MIDHA, J.

MARCH 10, 2017

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