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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
C.R.P. No.61/2017 & CM No.9308/2017 (for stay).
NIRMAL DEVI & ORS Petitioners
Through: Mr. Prateek Kohli, Adv.
versus
STATE & ORS Respondents
Through: Dr. Ashwani Bharadwaj, Adv. R-3.
AND
+ W.P.(C) No.11296/2016
INDIRA DEVI AND ORS Petitioners
Through: Mr. Atul Kumar, Adv.
versus
UNION OF INDIA & ORS. Respondent
Through: Dr. Ashwani Bharadwaj, Adv. R-1.
Mr. Prateek Kohli, Adv. for R-2 to 7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.07.2017

1. The Civil Revision Petition No.61/2017 under Section 115 of the Code of Civil Procedure, 1908 (CPC) arises out of a petition filed by the respondent no.2 Indira Devi seeking Succession Certificate qua the debts and securities left by her husband Hari Prasad who died on 26th February, 2002. The said petition for Succession Certificate was contested by the petitioners herein, with the petitioner no.1 Nirmal Devi also claiming to be the widow of the said Hari Prasad.

2. The aforesaid petition being petition no.574/2002 Unique ID No.02401C0125432002 was finally decided vide order dated 4th June, 2015 of the Court of Administrative Civil Judge (Central), Delhi. Vide the said order, the learned Administrative Civil Judge though held that in a

petition for Succession Certificate summary procedure is required to be undertaken and no question of law or fact incapable of determination in a summary proceeding determined, still, taking *prima facie* view, held that there was ample evidence on record to establish that Indira Devi had got married to the deceased prior in point of time than Nirmal Devi. Accordingly, Succession Certificate entitling Indira Devi to receive the service dues of the deceased Hari Prasad from the Department of Posts was ordered to be issued to the extent of 1/8th share, with the remaining share being of two children of deceased Hari Prasad from Indira Devi and five children of deceased Hari Prasad from Nirmal Devi.

3. Nirmal Devi and her children preferred an appeal being RCA No.5332/2016 to the Court of the District Judge against the order aforesaid of grant of Succession Certificate. The said appeal was accompanied with an application for condonation of 127 days delay in filing thereof. It is not in dispute that the actual delay was of 185 days.

4. The Court of the Additional District Judge-04, New Delhi District, Patiala House Courts, New Delhi has vide impugned order dated 9th January, 2017 dismissed the application for condonation of delay and resultantly the appeal.

5. Impugning the said order, the Civil Revision Petition No.61/2017 has been preferred and of which notice was ordered to be issued and interim stay of impugned order granted.

6. In the meanwhile, Indira Devi and her two children preferred Civil Writ Petition No.11296/2016 seeking a direction to the Department of Posts to, in accordance with the Succession Certificate, release the dues of the

share of Indira Devi and her two children.

7. The writ petition was also entertained and notice thereof ordered to be issued. Finding that there was interim stay of the order of grant of Succession Certificate in the Civil Revision Petition, the writ petition was also ordered to be heard along with the Civil Revision Petition.

8. Nirmal Devi and her children sought condonation of delay in filing the appeal aforesaid pleading that all of them are illiterate / semi literate and not fully conversant with the Rules and Regulations relating to filing of an appeal and the delay of 185 days in filing the appeal was occasioned for the said reason and for the reason of late receipt of certified copies of relevant documents. The said application was accompanied with the affidavits of Nirmal Devi and her children.

9. Indira Devi and her children opposed the application for condonation of delay, though not disputing that Nirmal Devi and her children were illiterate / semi literate, but contending that it was not disclosed as to what steps were taken for preferring the appeal.

10. The learned Additional District Judge has dismissed the application for condonation of delay by the impugned order dated 9th January, 2017, though running into thirteen paragraphs and as many as 12 pages but out of which facts leading to the filing of the appeal are contained on the first three pages and law of limitation discussed on the remaining pages. The only semblance of reasoning by application of law can be said to be contained in para 11 and para 13 of the order which are re-produced hereinbelow:-

“11. In the present case the appellant appear to be lacking in their bona-fie. The appeal has been filed only to frustrate the process of execution of the

judgment. The law of limitation cannot come to the rescue of such litigants. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This has been time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.”

“13. Considering the facts & circumstances of the case and the case law as discussed above, this court finds no merit in the application of the condonation of delay. Thus the said application seeking condonation of delay is dismissed. Consequently, the accompanying appeal does not survive. Same is also dismissed being time barred. File be consigned to record room.”

11. As would be evident, the grounds on which the condonation of delay was sought have not been discussed and the plethora of case law cited not applied to the facts of the case. The same does not amount to giving reasons for the order, as is the requirement of law.

12. The counsel for Nirmal Devi and her children has argued that Nirmal Devi and her children otherwise have a very good case and the delay has occurred owing to their illiteracy.

13. The counsel for Indira Devi and her children, besides supporting the order, has referred to ***Basawaraj Vs. The Spl. Land Acquisition Officer*** (2013) 14 SCC 811, also cited by the learned Additional District Judge and has contended that illiteracy cannot be a ground for condonation of delay and a person's own negligence cannot also constitute sufficient cause.

14. I have enquired from the counsels, whether besides the petition for Succession Certificate, there is any other litigation between the parties.

15. I am told that there is none.

16. I have explored the possibility of amicable settlement between the parties but the counsels have no instructions.

17. I am satisfied that the order of the Additional District Judge dismissing the application of Nirmal Devi and her children for condonation of delay in filing the appeal suffers from lack of reasoning and accordingly is liable to be set-aside. On the pleas for condonation of delay, I am satisfied that Nirmal Devi and her children have sufficient cause for delay in filing the appeal. Accordingly, the application for condonation of 185 days delay in filing the appeal against the order of grant of Succession Certificate is allowed, delay condoned and the appeal is restored to its original position.

18. The Civil Revision Petition is accordingly allowed and disposed of.

19. In view of the Civil Revision Petition having been allowed, the Writ Petition has become infructuous and is dismissed with liberty to the succeeding party to, after the order on the petition for Succession Certificate has attained finality, take appropriate proceedings for enforcement thereof.

20. The parties to appear before the Court of the Additional District Judge-04, New Delhi District, Patiala House Courts, New Delhi on 24th August, 2017 for further proceedings in the appeal.

RAJIV SAHAI ENDLAW, J

JULY 20, 2017

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