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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.1021/2017& CM No.33883/2017 (for condonation of 35 days delay in re-filing).
KAMLA RANI KAPOOR & ANR Petitioners
Through: Mr. Raj Kumar Bhartiya, Adv.
versus
ABHISHEK KAPOOR & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.09.2017**

CM No.33882/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.1021/2017& CM No.33883/2017 (for condonation of 35 days delay in re-filing).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 25th April, 2017 in PC No.42297/16 of the Court of Additional District Judge-06 (Central), Delhi) of dismissal of the application filed by the petitioners / respondents no.2&3 in the Probate Case for correction of their address in the memo of parties filed by the respondent no.2 / petitioner Abhishek Kapoor in the Probate Case.
4. I have enquired from the counsel for the petitioners the need for the petitioners / respondents no.2&3 to file the application. If it is the case of the petitioners / respondents no.2&3 that they are not residing at the address given in the memo of parties filed with the Probate Case, the said plea is to be taken in the reply / objections to the Probate Case and if relevant to the

adjudication of the Probate Case, would be a matter of issue in the Probate Case and would be decided at the time of adjudication thereof.

5. The counsel for the petitioners / respondents no.2&3 states that the respondent no.2 / petitioner Abhishek Kapoor in the Probate Case intentionally gave wrong address of the petitioners / respondents no.2&3 in the Probate Case to show his own possession of the property.

6. The aforesaid does not answer the query made. I repeat that if the place of residence of the petitioners / respondents no.2&3 in the Probate Case is relevant, the same has to be a plea in the reply / objections to the Probate Case and the memo of parties filed by the Abhishek Kapoor respondent no.2 / petitioner in the Probate Case cannot be ordered to be corrected. If at all it is the apprehension of the petitioners / respondents no.2&3 that owing to the wrong address given, the summons / notices in the Probate Case would not be served on them, the said apprehension can be allayed by filing an Address Form which in any case all parties to a *lis* are required to file.

7. The counsel for the petitioners / respondents no.2&3 in the Probate Case then states that the learned Additional District Judge in the impugned order has held that the petitioners / respondents no.2&3 have not filed any documents in support of their plea when in fact a large number of documents are filed.

8. The same is also not an explanation for filing of the misconceived application.

9. This petition is disposed of clarifying that if the place of residence of the petitioners / respondents no.2&3 in the Probate Case, is of any relevance

and a plea in that regard has been taken in the reply / objections of the petitioners / respondents no.2&3 to the Probate Case, the petitioners would be at liberty to press for an issue thereon and the learned Additional District Judge will consider the said request.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2017

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