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

+ CM(M) No.948/2017

SUNIL SUNEJA

..... Petitioner

Through: Mr. Neeraj Kumar Jha and Mr. Amit
Sharma, Advs.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.09.2017

CM No.31747/2017 (for exemption).

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

CM(M) No.948/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 2nd June, 2017 in PC No.50497/16 of the Court of Additional District Judge-II (North-West), Rohini Courts, Delhi) dismissing for non-prosecution, insofar as against the respondents no.2&3 Puneet Gujral and Rachna Sammy Gujral the petition filed by the petitioner seeking probate of a document claimed to be the validly executed last Will of the deceased W.N. Gujral.

4. Though the learned Additional District Judge in the impugned order, has also recorded the defaults on the part of the petitioner in having the citation of the petition published but an opportunity therefor was given for 31st August, 2017.

5. The counsel for the petitioner, on enquiry, though states that the publication has not been effected for 31st August, 2017 but states that another opportunity has been given therefor for 6th December, 2017.
6. Though the petitioner is indeed found to be negligent and lacking in taking steps for service of notice of the Probate Petition on the respondents no.2&3 and for having the citation published since 29th September, 2015 and for which reason no fault can be found with the order dismissing the Probate Petition for non-prosecution against the respondents no.2&3 but it is felt that since the learned Additional District Judge did not dismiss the entire Probate Petition for non-prosecution and gave another opportunity for publication of citation, the dismissal for non-prosecution against the respondents no.2&3 would not serve any purpose.
7. It is therefore deemed appropriate that the order dated 2nd June, 2017 insofar as dismissing the petition for non-prosecution against the respondents no.2&3 be set aside.
8. Since the respondents no.2&3 have not even been served with the notice of the Probate Petition from which this petition arises, need to issue notice to them is not felt.
9. The petition is accordingly allowed. The order, dismissing for non-prosecution Probate Case No.50497/2016, insofar as against the respondents no.2&3 thereto, is set aside and last and final opportunity is given to the petitioner to serve the respondents no.2&3 by all modes including *dasti* and electronic, returnable on the same date on which the Probate Petition is stated to be listed next i.e. 6th December, 2017.

9. The petitioner / his counsel to, on or before 7th September, 2017, make an application before the learned Additional District Judge along with a copy of this order, for issuance of notice / summons of the Probate Petition to the respondents no.2&3. It is made clear that if the application is not filed by 7th September, 2017, no further opportunity shall be given.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017

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