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

CM(M) 1178/2015

HAR DEVI & ORS

..... Petitioners

Through: Mr. B.K. Sood and Mr. Harish Gaur,
Adv.

Versus

STATE & ORS

..... Respondents

Through: Mr. Sanjoy Ghose, Adv. for R-1.
Ms. Geeta Vohra, Adv. for R-2.
Mr. Sankar Chhabra, Adv. for R-5.

AND

+ CM(M) 1120/2017 & CM No.15559/2014 (for condonation of 767
days delay in filing)

HAR DEVI & ORS

..... Petitioners

Through: Mr. B.K. Sood and Mr. Harish Gaur,
Adv.

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CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.10.2017

1. CM(M) No.1120/2017, originally filed and registered as FAO No.280/2014, impugns the order [dated 5th May, 2012 in PC No.1/2011 of the Court of Additional District Judge (ADJ)-07 (Central), Tis Hazari Courts, Delhi] of dismissal for non-prosecution of the probate case filed by the petitioners seeking probate of the document claimed to be the validly

CM(M) 1178/2015 & CM(M) 1120/2017

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executed last Will of deceased Bhagwan Devi. The petition was entertained and notice thereof ordered to be issued.

2. The petitioners had also applied to the Probate Court for review of the order of dismissal of the probate case for non-prosecution and which review was dismissed vide order dated 23rd July, 2014 in M No.62/2013 of the Court of ADJ-06 (Central), Delhi. CM(M) No.1178/2015 impugns the order of dismissal of the review application.

3. The counsel for the respondent No.1 State states that the State has no role in the aforesaid matters.

4. The counsel for the respondent No.2 Ram Lal states that she has no objection to the order of dismissal of the probate case for non-prosecution being set aside and the Probate Court being directed to dispose of the probate case on merits.

5. The stand of the counsel for the respondent No.5 Ram Kishan is the same.

6. None appears for respondents No.3&4 Kuldeep Satija and Shunti Satija.

7. The counsel for the petitioners states that the said respondents No.3&4 have been appearing from time to time.

8. On enquiry, it is stated that the probate case, when it was dismissed for non-prosecution, was at the stage of final arguments.

9. Thus, the order of dismissal of the probate case for non-prosecution is liable to be set aside not only because of no objection by the appearing respondents but also for the reason of Order XVII Rule 3 of CPC which requires the Court to decide the matter on merits, once the evidence has been

led and the proceeding is ripe for final disposal.

10. Before parting with the matters I may record that the Supreme Court in *Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy* (2016) 14 SCC 238 has held that no challenge by way of revision or a petition under Article 227 of the Constitution of India lies against an order of dismissal of review and the challenge if any lies only to the order of which review was sought.

11. The petitions are thus allowed; the impugned order dated 5th May, 2012 supra is set aside and the Probate Court is directed to, after giving opportunity to the parties to address final arguments, dispose of the probate case aforesaid on merits.

12. The parties to appear before the ADJ-07 (Central), Tis Hazari Courts, Delhi before whom the probate case was last pending or before the ADJ to whom the probate case may now be assigned, on 16th November, 2017.

13. The petitions are disposed of.

RAJIV SAHAI ENDLAW, J.

OCTOBER 12, 2017

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