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

***Decided on :- 10<sup>th</sup> April, 2018***

+ CM (M) 162/2017 & CM Nos. 5348/2017, 18554/2017,  
26099/2017

**RANJANA ARORA**

..... Appellant

Through: Mr. Alok Kumar & Mr. Rahul  
Madan, Advs.

versus

**SURENDER KUMAR ARORA & ORS**

..... Respondents

Through: Ms. Pinki Aggarwal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. The civil suit (presently registered as suit no. 613211/2016) was instituted by the petitioner on the original side of this Court in 1997, the prayer made being for partition of the subject property and rendition of accounts. The respondents who are defendants in the said suit are her siblings, all children and successors-in-interest of late Mr. Madan Lal Arora, the property which is the subject matter having been left behind by him as the estate. It appears reference has been made to a document described as last Will and testament of Mr. Madan Lal Arora. The written statement was filed by the first respondent (second defendant before the trial Court) jointly with other defendants wherein certain admissions qua the said Will came on record. By an

application moved (IA No. 2203/2004), however, he sought permission to file a separate written statement. The said application was allowed by learned single Judge of this Court by order dated 08.12.2005. As a consequence of the said permission being granted, the first respondent (second defendant in the suit) brought on record pleadings about clash of interest between him on one hand and the other parties on the other, he consequently no longer bound by the admissions in the earlier pleadings.

2. The petitioner being the plaintiff took exception to withdrawal of admissions by FAO (OS) 238/2013 which was disposed of by a judgment dated 10.05.2013 of the division bench of this Court giving liberty for the appeal to be withdrawn and instead appropriate application being moved before the trial court (learned single Judge on the original side of this Court) for withdrawal of the order dated 08.12.2005.

3. The petitioner moved an application, pursuant to the liberty granted by the division bench in appeal, on 30.05.2013. The application could not be disposed of while the suit was pending on the original side of this Court.

4. The suit stood transferred, upon change of pecuniary jurisdiction, to the district courts by order dated 19.05.2016. It was clarified at that stage when the plaintiff sought recall of earlier order passed by this Court, that the jurisdiction of the transferee court to deal with the said pending application was not taken away since it was not in the nature of review but only a “recall application”.

5. The Additional District Judge before whom the case came to be assigned, however, treated the aforesaid application as one of review and found it time-barred and consequently dismissed it by order dated 15.11.2016 which is assailed by the petition at hand.

6. To say the least, the approach of the trial court is not proper. Even if the application in question were to be treated as one of review, liberty having been granted by a division bench of this Court for such application being moved, application having come in less than 30 days of the said order, there was no reason for the application to be thrown out on the issue of limitation. The application is to be considered on its merits. Therefore, the impugned order cannot be upheld.

7. The petition is allowed. The impugned order is set aside. The matter arising out of the aforementioned application is remanded to the trial court for fresh adjudication on merits.

8. This disposes of the petition and the applications pending therewith.

**R.K.GAUBA, J.**

**APRIL 10, 2018**

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