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

+ **FAO(OS) 159/2018**

KEERTHI SHARMA

..... Appellant

Through Mr. Prosenjit Bannerjee, Mr. Sandeep Das, Mr. Ninad Dogra, Ms. Mehak Khurana and Ms. Shreya Singhal, Advocates.

versus

THE GOVERNMENT OF NCT OF DELHI & ORS..... Respondent

Through Mr. Piyush Sharma, Mr. Saksham Tyagi, Mr. Rajeev Lochan Mahumta and Mr. Aditya N. Prasad, Advocates for R-2.

Mr. Girdhar Goving and Ms. Neetu Singh, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **29.10.2018**

Caveat No. 974/2018

Caveator is present and will be heard.

Caveat is discharged.

C.M. No.44244/2018

Exemption allowed, subject to all just exceptions.

The application is disposed of.

FAO(OS) 159/2018 & C.M. Nos.44242/2018 and 44243/2018

Delay in filing and re-filing of the appeal is condoned.

After some hearing, counsel for the appellant states that he

would be satisfied if the Appellate Court clarifies that the appellant would be entitled to raise plea of limitation in the objections to be filed in the proceedings for letters of administration.

2. Counsel for the respondent No.2, who is the petitioner in Test Case No. 11/2015, pending before the single Judge, has drawn our attention to order dated 7th November, 2016, which records that the original last Will dated 16th April, 2009 was produced by the appellant. He submits that plea of limitation is of no consequence as the said respondent had bonafide filed probate proceedings which in several orders were passed and the parties were even referred to mediation. He submits that notices have been published and valuation report has been received. On the question and plea of limitation, it is submitted by the counsel for the second respondent that the executor, who was a party to the probate proceedings, had renounced his rights.

3. Counsel for the appellant states that the executor had renounced his rights prior to and before probate petition was filed.

4. Counsel for the respondent No.3 states that the matter should be expedited and technical pleas and issues should not be raised. He submits that the dispute is between three sisters.

5. Be that as it may, we take the statements made by the counsel for the appellant and respondent Nos.2 and 3 on record and dispose of the present appeal without interfering with the impugned order but clarifying that in case the appellant raises the question of limitation in the objections, the same would be considered and examined in accordance with law. We have issued and made this clarification, as amendment to treat the probate petition as a petition for grant for

letters of administration was allowed without any application being filed. Thus, the appellant did not get any opportunity to raise the question of limitation.

6. As noted above, the respondents have stated that the amendment made would relate back to the date of filing of original petition. We make no comment in this regard, but clarify that if this issue is raised, the same would be considered in accordance with law.

7. The appeal is disposed of.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 29, 2018
NA