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

+ CM(M) 1300/2016 & CM No.46749/2016

S Petitioners
Through: Mr. Sunil Upadhyay, Adv.

versus

S Respondents
Through: Mr. Rajesh, proxy counsel.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

% **ORDER**
18.01.2018

1. The petitioners have challenged the order dated 03rd September, 2016 whereby their application under Order IX Rule 7 of Code of Civil Procedure for setting aside of the order dated 15th October, 2011 was dismissed by the learned Family Court.
2. The respondents filed an application for appointment of guardian and manager of the minor girl, Purvee under Sections 7, 8, 9, 25 and 26 of the Ward and Guardians Act, 1890 in which the petitioners entered appearance on 02nd June, 2011 and sought time to file the reply which was granted and the case was adjourned to 16th September, 2011. However, the reply was not filed within the time granted and, therefore, the right to file the reply was closed on 15th October, 2011. The petitioners filed application for setting aside of the order dated 15th October, 2011 after more than five years in April, 2016. The learned Family Court was not satisfied with the explanation for delay of more than five years and, therefore, the petitioner's application was dismissed vide order dated 03rd September, 2016.
3. Learned counsel for the petitioner urged at the time of hearing that the

petitioners are in judicial custody since October, 2008 and they were not aware of the impugned order dated 15th October, 2011. It is further submitted that the matter was transferred from learned Family Court, Tis Hazari to learned Family Court, Dwarka in 2015.

4. Learned counsel for the respondent urged at the time of the hearing that the petitioners were well aware of the proceedings and they have deliberately chosen not to file the reply. It is further submitted that the petitioners have been convicted for the murder of the mother of the minor child, Purvee and they are serving life sentence. It is further submitted that the petitioner's counsel was present in Court on the various dates fixed between 2011 to 2016 but no prayer/application was made for setting aside of the order dated 15th October, 2011.

5. This Court is of the view that there is no infirmity in the impugned order dated 15th October, 2011. This Court agrees with the learned Family Court that the petitioners have not explained the delay of more than five years in approaching the Court for setting aside of the order dated 03rd September, 2016.

6. There is no merit in this petition which is hereby dismissed. The pending application is disposed of.

7. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

JANUARY 18, 2018
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