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

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Judgment delivered on: 14.03.2018

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RSA 45/2018 & C.M.Nos.9751-56/2018

PARAMJEET KAUR

..... Appellant

Through: Mr. V.K. Garg, Senior Advocate with
Mr. Vivek Sharma and Ms. Noopur
Dubey, Advocates.

Versus

KULDEEP SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

C.M.No.9754-55/2018 (for exemption)

1. Allowed, subject to all just exceptions.
2. The applications stand disposed off.

C.M.No.9756/2018 (for delay) & RSA 45/2018 & C.M.No.9751-52/2018

3. There is a delay of 120 days in removing objections and re-filing of the appeal. The learned Senior Counsel for the appellant states that for the reasons mentioned in the application, it should be allowed. In the Court's view, the stated reasons do not make out a sufficient cause for condoning the delay. However, the appellant insists that otherwise she has a good case on merits. Assuming that the application is allowed, the Court examines the case as under:-

4. This Second Appeal impugns an order dated 12.07.2017 which dismissed the first appeal (being RCA.60954/16) against the decree dated 15.12.2015. The respondent-plaintiff had filed a suit for declaration that the Sale Deed executed in favour of the appellant on 13.10.2006 was null and void. Admittedly, late Shri Rattan Singh, owner of the suit property, bearing no. A-62, Vishnu Garden, New Delhi, admeasuring 103 sq. yds., had executed a General Power of Attorney (GPA) in favour of his wife Smt. Pyari on 30.06.1995. The former passed away on 06.09.2006. The aforesaid Sale Deed dated 13.10.2006 was executed by his widow Smt. Ram Pyari, 34 days after his demise on the strength of the GPA.

5. The appellant had filed a suit for declaration that the sale deed was void because the Power of the Attorney became *infructuous*, non-operative and shorn of authority with the demise of the executant. The appellant did not file her Written Statement to the suit nor did she lead any evidence. Her right to file Written Statement was closed since despite ample opportunities she failed to do so. In the appellant's Revision Petition [C.M.(Main) No. 175/2015], this Court issued notice on 03.03.2015. However, consciously, the proceedings in the suit had not been stayed. The suit was decreed on 15.12.2015. Later, the aforesaid Revision Petition was dismissed by this Court on 18.04.2016 as having become *infructuous*. The appellant's First Appeal against the decree too was dismissed. In this Second Appeal, she has impugned both: the decree as well as the order in the First Appeal. It is argued that the GPA was, *inter alia*, executed to secure the interests of the agent in the property, therefore, the agency could not be terminated to the prejudice of such interest. In other words, there would be subsistence of the Power of Attorney even after the demise of the executant, as provided under

section 202 of the Indian Contract Act, 1872 ('the Act'). It also noted that the Sale Deed had mentioned that Shri Rattan Singh was alive on that date, as on 13.10.2006.

6. The learned Senior Advocate for the appellant submits that the consistent judicial policy in this country is to see that the disputes are adjudicated after according complete opportunity to the parties and by adjudication of issues on the merits. He contends that the appellant was misled by her previous counsel i.e. he did not file the requisite Written Statement within time leading to precipitate result of her not being able to present or prove her case. He requests that the appellant be put to terms, and she be granted another opportunity to prove her case, which otherwise is good on merits. To support his contention that the GPA was issued to secure the abiding interest of the Attorney/agent and, therefore, would fall within the proviso to section 202 of the Act, he refers to a Receipt for Rs.60,000/- dated 30.06.1995, issued by Shri Rattan Singh in favour of his widow. The document reads as under:-

R E C E I P T

RECEIVED A SUM OF Rs. 60,000/- Sixty Thousand Only), in Cash/Advance from SMT. PYARI W/O Sh. RATTAN SINGH R/O A-62, VISHNU GARDEN, NEW DELHI – 110018 on account of full and final settlement in respect of PLOT NO. 62, MEASURING 102.5 SQ. YDS. , KILLA NO. 19/1, MUSTATIL NO. 30, SITUATED IN THE AREA OF VILLAGE KHALA, DELHI STATE DELHI, COLONY KNOWN AS 'A' BLOCK, VISHNU GARDEN, NEW DELHI – 110018, WITH STRUCTURE OF ONE ROOM, BOUNDARY WALLS, AND HAND PUMP BUILT IN THE SAID LAND, with the free hold rights of the land thereto and the receipt of which do hereby- acknowledged.

Hence this Receipt is made at Delhi, on this 30/6/95 in the presence of the following witnesses.”

7. The document records that a sum of Rs.60,000/- had been received by Shri Ratan Singh from his wife in full and final settlement of the suit property. However, it neither intends to nor does it transfer any right, title or interest in favour of Smt. Pyari, now his widow. Therefore, even if the said document were to be taken into consideration as evidence, it could hardly be read to create any interest in favour of Smt. Pyari, so as to fashion an abiding interest in the property or to secure the same in her favour, through the GPA. Interestingly, the GPA itself does not mention the said cash receipt, which allegedly was made about more than 11 years and four months earlier. If Shri Ratan Singh and Smt. Pyari intended to link the Cash Receipt with the GPA, to record that Smt. Pyari, the attorney/ agent, would have an abiding interest in the agency of attorneyship, then the GPA should have said so. In the absence of any such agreement an inference to that effect cannot be made.

8. The learned Senior Counsel then refers to the Will executed by late Shri Rattan Singh. However, the Will too does not mention anything about securing of interest of the Agent/Power of Attorney Holder in favour of her interests in the suit property.

9. The impugned order has reasoned as under:-

“12. Admittedly, on the date of the execution of the Sale Deed, the executant of the GPA in favour of Smt. Pyari @Jaswant Kaur was not alive. It is a settled law that GPA until and unless is irrevocable will come to an end with death of the executant. Hence, I do not find any infirmity and illegality in the impugned order. Accordingly, present

appeal is dismissed. Parties to bear their own cost. Appeal file be consigned to record room. TCR be sent back along with copy of this order.”

10. In view of the above, it is evident that there was no constraint upon the appellant in filing her Written Statement within time and nothing prevented her from leading evidence during trial of the suit. Interestingly, no application was made before the First Appellate Court to lead any evidence to bring on record such document, as is sought to be relied upon now.

11. In the absence of any unavoidable intervening circumstance preempting or constraining the appellant from pursuing her case before the Trial Court, there would be no justification in granting the appellant yet another opportunity at the second appellate stage. The rights of the respondents adjudicated after long trial and upheld by the impugned orders cannot be lightly trifled with.

12. No question of law arises in this appeal. Accordingly, for the aforesaid reasons, it, alongwith pending applications, is dismissed.

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NAJMI WAZIRI, J.

MARCH 14, 2018

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