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

+ **FAO (OS) 38/2019**

DR. JYOTI SINGH

..... Appellant

Through: Mr.N.Kukreja, Adv. with Mr.Sanjay
Kumar, Adv.

Versus

STATE (GOVT OF NCT OF DELHI) & ANR. Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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20.02.2019

C.M.No.8140/2019 (exemptions)

Allowed, subject to all just exceptions.

C.M.No.8138-39/2019 (delay in filing and re-filing)

For the reasons stated in the applications, the delay in filing as well as re-filing is condoned and the applications are disposed of.

FAO(OS) 38/2019

1. This appeal filed under Section 10 of the High Court Rules, 2018 read with Section 43 of the Code of Civil Procedure, 1908 calls in question the tenability of an order passed by the learned Single Judge on 13th September, 2018 thereby dismissing the chamber appeal filed by the appellant calling in question the justification of the order passed by the Joint Registrar in closing the right of the appellant to raise objections and refusing to take on record the objections subsequently filed.

2. In a testamentary case, being Test. Cas.79/2015 filed by the respondent No.2/Dharm Vir which was pending since June, 2015 when

objections were not filed in spite of public notice being given in various newspapers, namely, Hindustan Times (English Edition), Nav Bharat Times (Hindi Edition) and Times of India (English Edition) on 30th April, 2016. When the objections were not filed even in spite of counsel appearing as they kept on taking adjournments, the right to file the objections has been rejected primarily on the ground that the appellant has failed to file the objections within time. The attesting witness is more than 80 years of age and the delay has been caused without any justification and as the delay may prejudice the appellant, the learned Single Judge refused to interfere with the order passed by the Joint Registrar on 8th August, 2018. Even though, it is stated by the learned counsel representing the appellant that the appellant could not file the objections because of lapses on the part of his earlier counsel and immediately when the present counsel appeared, she was willing to file the objections and did file it after the impugned order was passed.

3. The learned Single Judge has found that the appellant, in spite of newspaper publication in April, 2016, did not take any action and it was her contention that it was only when co-objector, her cousin, Mr.Jitender Kohli informed him in November, 2017 that she was made aware of her rights, the learned Single Judge has held that Mr.Jitender Kohli, his cousin brother has been appearing in the proceedings since 19th October, 2016. Since, Mr.Jitender Kohli also did not file his objections after grant of more than six opportunities, his right had been closed and, therefore, holding the appellant not to have made out any substantial ground, the prayer has been rejected. In exercise of the discretion on account of the delay and default on the part of the appellant in taking action for filing of the objections within time, the

learned Single Judge has not committed any error. It seems that the appellant is deemed to have had knowledge of the proceedings when objections were invited by newspaper publication on 30th April, 2016 and when his brother Mr.Jitender Kohli was also present in the proceedings since October, 2016, she is deemed to have knowledge about the same.

4. Taking note of all these factors, we also see no reason to make any indulgence into the matter with regard to the discretion exercised by the learned Single Judge in closing the right of the appellant to file the objections. A reasonable decision taken by the learned Single in the facts and circumstance of the case does not call for any further indulgence into the matter.

5. The appeal is accordingly dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

FEBRUARY 20, 2019

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