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

Date of Decision: 18.09.2019

+ LPA 607/2019

SATBIR SINGH & ANR

..... Appellants

Through: Mr. Dhruv Sharma & Mr. Soumya
Das, Advs.

versus

THE FINANCIAL COMMISSIONER & ORS

..... Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL.41632 /2019 (*Exemption*)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL.41633 /2019

This application has been preferred under Section 5 of the Limitation Act for condonation of delay of 145 days in preferring this appeal.

Having heard the counsel for the appellants and looking into the reasons stated in the application, there are reasonable grounds for condonation of delay. We hereby condone the delay of 145 days in preferring this appeal.

The application is allowed and disposed of.

LPA 607/2019

1. This Letters Patent Appeal has been preferred by the original petitioner challenging the judgement and order dated 15th March, 2019 passed by the learned Single Judge in W.P.(C) 541/2017.
2. We have heard the counsel for appellants (original petitioners). It is submitted by the counsel for appellants that the writ petition was preferred for quashing the order dated 6th December, 2016 passed by respondent No.1 in Case No.184/2012.
3. The counsel for appellants (original petitioners) has narrated before this Court the detail of the litigations between the parties to this appeal and finally, it is submitted that a suit for partition was filed by this appellant, being Suit No.113/2002, in which one of the issues was validity of the will (Issue No.3). The said issue was decided in favour of this appellant.
4. It is further submitted by the counsel for appellants (original petitioners) that respondent No.4 has also filed one more Civil Suit, bearing No.247/2010, in which the validity of the will was under challenge. The said suit was dismissed *vide* order dated 2nd February, 2011, against which an appeal was preferred by Shri Om Prakash – respondent No.4. The said appeal was also dismissed by order dated 6th August, 2011 and hence, the issue is *res judicata*, so far as the question of validity of the will is concerned. Nonetheless, in the impugned judgment and order, the learned Single Judge has observed in paras 14 and 15 that respondent No.4 can file a suit for determination of his better right, title, interest and invalidation of the will in question. Learned counsel for the appellants submitted that so far as the question of validity of the will is concerned, there is *res judicata* under Section 11 of the Code of Civil Procedure, 1908.
5. There is also a question of limitation which would arise if respondent

No.4 is permitted to file a civil suit challenging the validity of the will in question. Hence, we see no reason to entertain this appeal, mainly for the reason that nothing has been stated against these appellants so far as the permission granted to respondent No.4 to file a civil suit is concerned. Respondent No.4 can always file a suit for better title, right and interest in the property in question. So far as invalidation is concerned, as and when a suit is filed by respondent No.4, the same will be decided in accordance with law on the basis of evidences available on record, as well as on the principle of *res judicata* and keeping in mind the arguments to be canvassed by these appellants who may be defendants in the suit filed by respondent No.4. The plea of *res judicata* is left open to be raised by these appellants in Civil Suit No.570/2019 and it will be appreciated by the concerned Court in accordance with law. No further arguments have been canvassed.

6. We see no reason to interfere with the order passed by the learned Single Judge in W.P.(C) 541/2017, dated 15th March, 2019.

7. With the aforesaid observations, this Letters Patent Appeal is dismissed.

CM APPL.41631/2019 (*Stay*)

8. In view of the order passed in LPA 607/2019, this application is also dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

SEPTEMBER 18, 2019

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