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

+ **FAO 450/2016**

USHA MEHTA

..... Appellant

Through **Mr.Rajiv K. Garg, Mr.Ashish Garg,**
Advocates

versus

STATE & ANR

..... Respondents

Through **Mr.Sanjeev Sharma, Advocate for**
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **15.02.2019**

1. The appellant has challenged the order dated 06th May, 2016 whereby the learned Trial Court dismissed the restoration application. The appellant has also challenged an order dated 18th July, 2016 whereby the learned Trial Court dismissed the application for review of the order dated 06th May, 2016.

2. The appellant filed a petition for probate of the will of late Brij Rani Mehta being P.C. No.26/2008 which was dismissed in default on 27th March, 2015. The appellant filed an application for restoration of the petition on 25th April, 2016 on the grounds that the appellant was bedridden due to ill health; the counsel was regularly appearing earlier before the Court; one witness to the will had already been examined and the other attesting witness to the will was in the process of cross-examination; the appellant came to know of the dismissal of the petition when she received the notice of the partition suit filed by respondent No.2 on 09th April, 2016

and the restoration application was filed on 25th April, 2016.

3. Learned counsel for the appellant submits that the non-appearance of the appellant on 27th March, 2015 was neither deliberate nor intentional and the appellant should not be punished for the mistake of her counsel by neither appearing before the Court nor informing her.

4. Learned counsel for respondent No.2 submits that respondent No.2 is a permanent resident of Australia and she is willing to amicably settle the matter with the appellant through mediation. It is further submitted that respondent No.2 has filed a suit for partition of the suit property which is pending in Saket Courts. It is submitted that respondent No.2 could not come on the dates of mediation on account of ill health and she has informed that she would be coming to India in the last week of March. It is submitted that the endeavour to settle the matter through mediation be continued.

5. This Court is satisfied that the appellant has shown sufficient cause for non-appearance on 27th March, 2015 and therefore, the impugned order dated 27th March, 2015 is liable to be set aside.

6. The appeal is allowed and the impugned order dated 27th March, 2015 is hereby set aside. The probate petition bearing No.P.C.26/2008 is hereby restored.

7. The parties shall appear before the District Judge, Tis Hazari Court on 25th April, 2019.

8. This matter was referred to Delhi High Court Mediation and Conciliation Centre on 23rd August, 2017. The mediation proceedings shall continue and the report with respect to the outcome of the mediation be sent directly to the Trial Court.

9. The parties shall appear before the Mediation Centre on 02nd April, 2019.

10. The Trial Court record be returned back forthwith.

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

J.R. MIDHA, J.

FEBRUARY 15, 2019

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