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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TEST.CAS. 41/2017**
GAURAV KAPOOR

..... Petitioner

Represented by: Mr. Sushil Kumar Singh Advocate

versus

STATE & ORS

..... Respondent

Represented by: M r. Vidur Kamra, Advocate for R-2
along with respondent no.2

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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10.01.2020

I.A. 17140/2019 (under Section 151 CPC)

1. By this application, the petitioner seeks restoration of the testamentary case being TEST CAS.41/2017. Before deciding this application, it would be appropriate to narrate the proceedings in the testamentary case.
2. The testamentary petition came up before this Court for the first time on 25th August, 2017 when notice was issued to the respondent no.1/State and the Chief Revenue Controlling Officer besides to the respondent nos. 2 to 6. Citation was also directed to be published. The petitioner did not file any process fee and on 8th January, 2018 i.e. this Court issued fresh notices to respondent nos. 3 to 6. As learned counsel for the respondent no.2 had entered appearance having seen the present case through a case pending in Rohini Courts between the same parties, fresh notices to respondent nos. 3 to 6 were issued, returnable for 3rd April, 2018 when again the report was

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that notice could not be issued to respondent nos. 3 to 6 as process fee was not filed. Moreover, none appeared on behalf of the petitioner on 3rd April, 2018.

3. On the next date of hearing i.e. 28th May, 2018 proxy counsel for the petitioner appeared and steps for service of respondent nos. 3 to 6 as directed had not been taken and thus fresh notice was again issued to respondent nos. 3 to 6, returnable for 23rd August, 2018. Even on 23rd August, 2018, the learned Joint Registrar noted that notice could not be issued to respondent nos. 3 to 6 as process fee had been returned under objection.

4. This Court again granted one last and final opportunity to the petitioner to take steps for the service of respondent nos. 3 to 6 through all modes subject to cost of ₹ 10,000/- . On the next date of hearing i.e. 1st November, 2018 none appeared on behalf of the petitioner and thus the petition was simply renotified for directions on 22nd November, 2018. On 22nd November, 2018, learned counsel for the petitioner was present in the Court when respondent no.2 who had entered appearance and submitted that a connected matter in the form of a Commercial Matter between the same parties was pending before the learned District Courts where the petitioner took an adjournment on the ground of pendency of the present proceedings.

5. Again on the next date of hearing i.e. 1st February, 2019 proxy counsel for the petitioner prayed for an adjournment as main counsel was in some personal difficulty.

6. On 11th April, 2019, this Court noted that the petition was pending since August, 2017 and no steps have been taken by the petitioner to serve

the respondents and despite the order dated 1st February, 2019, the cost as imposed was handed over only on 11th April, 2019. On a further cost of ₹ 10,000/-, final opportunity was granted to the petitioner and notices were issued to respondent nos. 3 to 6, returnable for 28th May, 2019. Despite the same, the petitioner neither took steps for issuance of notice nor for depositing the cost. Thus one more final opportunity was granted and the matter was listed for 5th July, 2019. Again no steps were taken for service of respondent nos. 3 to 6. Thus the petition was dismissed for non-prosecution on 5th July, 2019.

7. On 30th August, 2019, the application for restoration came up before the Court in which notice was issued and was listed for 21st October, 2019 when again none appeared on behalf of the petitioner and thus the application for restoration was also dismissed for non-prosecution.

8. The only explanation rendered for recall of the order dated 21st October, 2019 is that the petitioner's counsel noted the next date of hearing as 25th October, 2019 and thus could not appear on 21st October, 2019.

9. The narration of facts shows a continuous default on the part of the petitioner. The present case is of gross negligence. Thus this Court finds no ground for restoration of the application. Application is dismissed.

MUKTA GUPTA, J.

JANUARY 10, 2020
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