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

+ **W.P.(C) 10502/2019**

**MS. PADMA SAHGAL**

.....Petitioner

Through: Ms. Kirti Mewar and Mr. Ishaan  
Sahai, Advs.

versus

**NORTH DELHI MUNICIPAL CORPORATION .....Respondent**

Through: Mr. Tushar Sannu, SC with Mr.  
Priyankar Tiwari, Mr. Manoviraj  
Singh, Advs. and Mr. Harish, AE  
(MCD)

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**ORDER**

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**08.08.2024**

**CM APPL. 36729/2024 (filed on behalf of the respondent seeking  
condonation of delay in filing the reply to the additional affidavit dated  
21.12.2023)**

1. For the reasons stated in the application, the delay of 91 days in filing the reply to the additional affidavit dated 21.12.2023 stands condoned.
2. The application stands disposed of.

**W.P.(C) 10502/2019**

3. Heard learned counsel appearing for the parties and perused the records.
4. The writ petition has been filed by the petitioner seeking the following reliefs:-



*“A. Issue an appropriate writ, order or direction, thereby directing the Respondent to Issue letter of possession to the Petitioner for the alternate shops in lieu of shops bearing No. 9 and 10 Azad Market, Delhi;*

*B. Issue a writ order or direction in the nature of mandamus directing the respondent to act in accordance with law and to further disclose the rehabilitation policy adopted by the Respondent in allotment of alternate shops to the shopkeepers of Azad Market Area, Delhi;*

*C. Direct the Respondent to pay compensation to the Petitioner for the hardship caused on account of the acts of omissions & commissions on part of the Respondent; and*

*D. award costs of the Petition”*

5. It is not in dispute that the original petitioner is entitled for the allotment of alternate shops. The respondent-Corporation has placed on record affidavit stating therein that the proposal was already processed by the respondent-Corporation and Shop Nos. 317 and 402 at Sanjay Gandhi Transport Nagar was proposed to be allotted to the petitioner. The final decision on the said proposal is still pending.

6. During the pendency of the writ petition, the original allottee/petitioner has expired and on the basis of Will, the legal representative has been substituted as the petitioner. The respondent-Corporation has raised following objection in its affidavit :-

**“APPLICANT IS PLAYING A FRAUD UPON THE COURT:**

*4. That the Applicant despite admittedly having knowledge of the death of the Petitioners herein (on 28.07.2020) moved an Application for early hearing in February of 2022, which was registered as CM Appl. 12339/ 2022 and continued contesting the Petition in the stead of the Petitioner, keeping everyone completely oblivious to the fact of sad demise of Petitioner. It was about two and a half years after the demise of the Petitioner that the Hon’ble Court was informed of her death.*

**THE DELAY IN FILING THE APPLICATION FOR SUBSTITUTION**



**OF L.R. IS NEITHER COGENT NOR SUFFICIENT:**

5. That the Hon'ble Supreme Court of India in '**Puran Sinsh & Ors. V State of Punjab**', **1996 AIR 1092** has held that the delay in filing the Application for 2 substitution can be condoned only if a sufficient cause is shown. That the excerpt of the Judgment is reproduced hereunder:

“[...]

As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not that the petitioner or the appellant in such writ petition or writ appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding to what shall be a reasonable time, the High Court may take note of the period prescribed under Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representative. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court substitute the legal representative and proceed with the hearing mean survives. as an can 3 of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the inaction of the petitioner or the appellant has become final.

[...]”

6. That in the instant case the Applicant has not adduced a sufficient cause for delay in filing the present Application. That the Applicant admits that she visited India at the time of the demise of Petitioner herein. That the reason for delay as accounted for by the Applicant is neither cogent nor sufficient. That the Applicant explains the delay on one hand attributing it to her ill health and on the other hand to the fact that she presumed that she was still authorized to contest the



*Petition on behalf of the Petitioner on the basis of the Power of Attorney which the Petitioner had executed in favour of the Applicant when she was alive. That the reason adduced is neither cogent nor sufficient as the Applicant could at any time, irrespective of her health issue or her being in India or not, could have telephonically or through electronic message informed her counsel of the demise of Petitioner, when infact the matter was being attended and contested on every date after the demise of 4 the Petitioner. That the reason for delay adduced by the Applicant is as under:*

*“[...]*

*It is pertinent to note that the Applicant was representing the Petitioner in the present Writ Petition as her GPA Holder, and thus, on account of inadvertence, accidental slip or omission the fact about the death of the Petitioner on 28.07.2020 could not be placed on records of this Hon'ble Court and she continued to represent in the matter being Attorney. It was only on 13.02.2023 that the Counsels of Petitioner for the first time came to know about the demise of the Petitioner and prior to 13.02.2023, the Counsels were not aware about the death of the Petitioner and as such, they could not have advised for filing of the present Application.*

*[...]”*

*That the Applicant has not adduced any documentary evidence in support of her averments qua delay in filing the Application under reply.*

**THE VERACITY OF THE WILL/ SURVIVING LEGAL HEIRS CANNOT BE DECIDED IN WRIT PETITION;**

*7. That the Hon'ble Court while adjudicating Writ Petition cannot decide the veracity of Will based upon which the Applicant claims substitution. That a Will can only be enforced by way of Probate i.e. certifying of the Will by a Court of Competent Jurisdiction. The Executor can apply for a grant of probate in the court of competent jurisdiction by way of a proper application.*

**TRUST IS “AN OBLIGATION” AND NOT A LEGAT ENITITY**

*8. Section 3 of the Indian Trust Act, 1882 defines trust as under:*

*“A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the declared and accepted by him, for the benefit of another, or of another and the owner.”*



*From the definition it is clear that ‘a Trust’ is an obligation” and hence it does not convey the idea that “the trust’ is a legal person or a tangible corporeal property. A ‘trust property’ is nothing but the subject matter of the trust; that is, or a property which is impressed with the obligation giving rise to a trust. When we speak of a trust, we speak merely of the obligation which is annexed to the ownership of the property.”*

7. Learned counsel appearing for the petitioner submits that so far as the issue with respect to allotment of shops in question to the trust is concerned, the petitioner is not pressing the said relief. The petitioner, however, submits that for the purpose of obtaining probate of the Will in question, the necessary proceedings have already been initiated before the Court of competent jurisdiction. She, therefore, submits that subject to the probate being granted in favour of the petitioner, the respondent-Corporation be directed to proceed for the allotment of alternate shops.

8. Learned counsel appearing for the respondent-Corporation fairly submits that if the petitioner confines her prayer to the allotment of shops as per the Will, subject to necessary probate, the respondent-Corporation will have no objection.

9. In view of the aforesaid, the Court deems it appropriate to dispose of the instant petition with the following directions:-

- i. Let the petitioner furnish probate with respect to the Will in question with the respondent-Corporation, once the same is granted by the Court of the competent jurisdiction.
- ii. Upon the petitioner producing the probate with respect to the said Will, the respondent-Corporation is directed to proceed with the allotment of shops in question in favour of the legal representative of the original writ petitioner.



- iii. The respondent-Corporation shall undertake the process and shall complete the same within a period of six weeks from the date of receipt of the probate certificate.

**AUGUST 08, 2024/p**

**PURUSHAINdra KUMAR KAURAV, J**