



2024:DHC:5309-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 97/2024 & C.M.Nos.39314-39316/2024****USHA KHANNA AND ANR**

.....Appellants

Through: Ms.Rahella Khan with Mr.Arshit
Bashir and Mr.Rahul, Advocates.

versus

VINAY KHANNA

.....Respondent

Through: None

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Date of Decision: 16th July, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present appeal has been filed challenging the orders dated 03rd August, 2022 and 29th November, 2023 passed by the learned Single Judge in TEST CAS. 65/2010 whereby vide the impugned order dated 03rd August, 2022, the right of the appellants to file objections was closed and subsequently vide order dated 29th November, 2023, the application under Section 151 CPC to recall the order dated 03rd August, 2022 and granting a period of seven days for re-filing the objections was dismissed.

2. It is pertinent to mention that the present appeal is accompanied by an application for condonation of delay of 155 days in filing the same.

3. Learned counsel for the appellants states that in 2010, respondent no. 1 filed a petition bearing TEST CAS.65/2010 for Grant of Letters of



Administration to the Will dated 08th August, 1983 ("Impugned Will") allegedly executed by Late Smt. Indra Khanna. She states that vide order dated 09th March, 2018, the learned Single Judge directed the parties to file their respective reply/objection within a period of ten weeks if no settlement was arrived at.

4. She states that in terms of the order dated 09th March, 2018, appellant no.1 filed her reply/objections to the petition on 17th May, 2018 vide Diary No.135274/2018 and appellant no.2 filed her reply/objection vide Diary No. 136854/2018 on 19th May, 2018. However, considering the fact that the settlement between the parties was still underway, the same remained under objection with the Registry of this Court.

5. She emphasises that as per the order dated 09th March, 2018, the right to file the reply/objection by the appellants was to be closed only upon failure of settlement talks between the parties. She points out that the settlement talks between the parties were pending till 28th July, 2022.

6. Having heard learned counsel for the appellants and having perused the paper book, this Court finds that on 09th March, 2018, the learned Single had given a categorical direction stating that if a settlement was not arrived at between the parties within ten weeks, the appellants shall file their reply/objection to the petition.

7. This Court is not in agreement with the contention of learned counsel for the appellants that the right to file the reply/objection was to be closed upon failure of settlement talks only.

8. This Court is also of the view that the learned Single Judge has rightly closed the right of the appellants to bring their reply/objection on record, as on 09th March, 2018, it was clearly directed that if no settlement was arrived



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at within ten weeks, the reply/objection shall be filed by the appellants, otherwise their right to file the same shall be closed. The fact that the appellants filed their reply/objection within ten weeks clearly shows that even the appellants understood the direction to mean that the reply/objection had to be filed within a period of ten weeks if no settlement was arrived at during that period and not upon failure of settlement talks.

9. The callous and negligent attitude of the appellants in not bringing their reply/objection on record for six years despite having filed the same with the Registry of this Court is not acceptable.

10. Accordingly, the present appeal along with the applications is dismissed both on merits as well as delay.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 16, 2024
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