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

+ C.R.P. 368/2023 and CM APPL. 63838/2023 (For Directions)

SH. ARVIND SWAMI

..... Petitioner

Through: Mr. Gurmit Singh Hans, Adv.

versus

DADU DAYALU MAHASABHA JAIPUR TRUST

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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24.01.2024

CM APPL. 63837/2023 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 63840/2023 (Delay of 55 days in filing the present appeal) and CM APPL. 63841/2023 (Delay of 34 days in re-filing the present appeal)

3. These applications have been filed on behalf of the respondent seeking condonation of delay of 55 days in filing the present civil revision petition and condonation of delay of 34 days in re-filing the present civil revision petition.
4. Heard. For the reasons stated in both the applications, the delay of 55 days in filing the present civil revision petition and the delay of 34 days in re-filing the present civil revision petition are condoned.
5. Both applications stand disposed of.



C.R.P. 368/2023 and CM APPL. 63839/2023 (Stay)

6. The petitioner, who is the defendant in Civil Suit bearing DJ No. 10623/2016, assails the impugned order dated 04.05.2023 which has been passed by the learned ADJ-10, Central District, Tis Hazari Courts, Delhi, whereby his application under Order VII Rule 11 CPC has been dismissed.

7. None appeared on behalf of the respondent/plaintiff despite advance notice.

8. Having heard learned counsel for the petitioner, and in particular having referred to the observations made by the learned Trial Court in paragraphs (15) and (16), this Court finds that there is no illegality, perversity of illegal approach adopted by the learned Trial Court in dismissing the application of the petitioner/defendant under Order VII Rule 11 CPC.

9. However, the learned Trial Court needs to address the issue regarding the validity of the Will dated 04.06.1963 which is shown to have been executed by Sh. Nitya Nand Swami. It appears that in the earlier suit i.e. Civil Appeal No. 295/2 of 1964 No. 46 of 1966 decided by Senior Sub Judge, Rohtak, *inter alia* an issue had been framed with regard to execution of the said Will, and the matter went upto the Supreme Court, which led to passing of the judgment dated 02.02.1987.

10. During the course of arguments, learned counsel for the petitioner has pointed out that the matter is now at the stage of framing of issues. Let the learned Trial Court also frame an issue regarding the maintainability of the suit and decide the same accordingly.



11. With such observations, the present petition is disposed of. Nothing contained in this order shall tantamount to an expression of the opinion on the merits of the case.

12. Copy of this order be sent to learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

JANUARY 24, 2024

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