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

+ C.R.P. 318/2024

SH KUMAR AMBWANI

.....Petitioner

Through: Mr. R.S. Roy, Advocate.

versus

SH PARSHOTAM KUMAR AMBWANI ALIAS PARSHOTAM

AMBWANI AND ORS

.....Respondents

Through: Mr. Rishikesh Kr. ASC with Mr. Atik
Gill and Ms. Sheenu Priya, Advocates
for R2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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28.10.2024

CM APPL. 63733/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

C.R.P. 318/2024

3. The Civil Revision Petition under Section 115 of the CPC, 1908 has been filed on behalf of the Petitioner to challenge the Order dated 19.09.2024 vide which the Application under Order 7 Rule 11 CPC read with Section 151 CPC seeking rejection of the Probate Petition on the ground of limitation, has been rejected.
4. According to the revisionist, Smt. Kamla Ambwani, the mother of the petitioner and respondent No. 2 to 6, died intestate on 31.05.1999 while her husband, Mr. Sachanand Ambwai, expired on 24.01.1994. The respondent No. 4, Smt. Lalita D. Balwani, filed the Probate Petition No. 84/2017 seeking Probate of a Will dated 16.06.1993 allegedly executed by Smt.



Kamla Ambwani, which is claimed to be a forged and fabricated document. The Probate Petition has been filed only in December, 2017 i.e. after 18 years of demise of the mother and is barred by limitation. The Probated Petition is, therefore, liable to be rejected.

5. The petitioner in the Main Petition and the respondent *herein*, opposed the Application on the ground that the limitation of three years, as provided under Article 137 of the Limitation Act, 1963 commences from the date when there is an objection raised to the Will. Reliance has been placed on Kunvarjeet Singh Khandpur vs. Kirandeep Kaur and Others, (2008) 8 SCC 463. It had been disclosed in the Petition that Late Sh. Krishan Chand @ Kishan Ambwani, the elder brother of the parties, died on 23.01.2015 and after his demise, this Will dated 16.06.1993 was found with the files from the trunk, the Will was discovered. The limitation for filing the Probate Petition, thus commences from the date on which the Will was discovered. The Petition is filed within the limitation. The Application under Order 7 Rule 11 CPC has been rightly rejected.

6. **Submissions heard.**

7. It is the settled Law that while deciding the Application under Order 7 Rule 11 CPC, it is only the averments contained in the Petition which has to be considered. There is a specific averment of discovery of the Will only in 2015. From the said date, the Probate Petition filed is within the limitation. In any case, Issue No. 3 has already been framed and the evidence of the parties is being recorded.

8. The Application under Order 7 Rule 11 CPC has been rightly rejected. Observations made herein are without prejudice to the merits of the case. There is no merit in the Revision Petition, which is hereby dismissed.



9. The Revision Petition is disposed of accordingly.

OCTOBER 28, 2024/RS

NEENA BANSAL KRISHNA, J