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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 18.12.2024

+ CM(M) 3913/2024

PARAS THUKRAL

.....Petitioner

Through: Mr. Utkarsh, Ms. Anshu
Priyanka, Mr. Vipul Saluja,
Advocates.

versus

ANU SOHAL

.....Respondent

Through: Mr. Chirag Dilavari, Advocate.

CORAM:**HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT(ORAL)****CM APPL. 68862/2024 (exemption)**

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 3913/2024 & CM APPL. 68861/2024 (stay)

1. Petition under Section 227 of the Constitution of India has been filed, seeking setting aside of the order dated 02.05.2024 passed by District Judge-02, West, Tis Hazari Court, Delhi in the case titled as "Anu Sohal Vs. State & Ors.", bearing No. PC/15889/2016.
2. Respondent preferred Probate Petition on the basis of Will dated 01.06.2012, executed by Ms. Swaran Chopra in her favour.
3. Notice of the petition was sent to the petitioner, but he did not appear. On 14.12.2023, petitioner filed written statement along with

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an application for condonation of delay, which came to be dismissed vide impugned order dated 02.05.2024.

4. Learned counsel for the petitioner submits that petitioner is an actor by profession and was residing in Mumbai at the time of death of Ms. Swaran Chopra and continued to stay there till the end of Covid-2019. It is further submitted that petitioner was never served with the notice and was not aware about the pendency of the probate petition and came to know of the same for the first time in September 2023 upon receipt of summons from the court to appear as a witness in the probate case. Thereupon, he engaged an Advocate, who applied for certified copy of the judicial file on 18.10.2023, which got prepared only on 18.11.2023. During this time, six months old daughter of the petitioner fell ill and petitioner could contact his counsel only on 09.12.2023.

5. It is submitted that upon meeting his counsel and looking into the judicial file, petitioner learnt that the signatures affixed on the service report of 16.04.2013 were not his and are forged signatures.

6. It is submitted that petitioner could not participate in the probate proceedings because he was not having any information about the pendency of the probate petition and due to this reason, he could not file written statement within the stipulated period.

7. It is argued that the trial court ignored the Process Server's incorrect report, which does not bear the petitioner's signatures and failed to consider the petitioner's absence from Delhi.

8. It is no more *res-integra* that the provisions of Order 8 Rule 1



CPC providing for upper time limit of 90 days to file the written statement is directory, but such discretion cannot be exercised in a routine manner or on mere asking of the defendant. In the case of **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, (2005) 6 SCC 344**, the Apex Court held that in such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within 30 days.

9. As per the report of the Process Server, summon was served upon the petitioner on 16.04.2013. In acknowledgement of receipt of summons, petitioner appended his signatures on the report of the Process Server. The report is duly signed by the Process Server and is on oath. There is a presumption of correctness attached to the report of the Process Server, who is a public servant and submitted the report on solemnly affirmation. On the basis of the report of the Process Server, trial court rightly concluded that petitioner was aware about the proceedings of the present petition since the date of his service i.e. on 16.04.2013 and did not accept his submission that summons do not bear his signatures.

10. Petitioner has not placed on record any document in support of his contention that he was not in Delhi during the relevant period from 27.11.2011 till March 2021. Even as per his own submission, petitioner came to know about the pendency of the probate petition in September 2023. Despite this, no urgency was shown, so much so, the written statement along with application for condonation of delay was



filed as late as on 14.12.2023. Petitioner has not brought to the notice of the court any medical record regarding the treatment of his daughter. Written Statement has been filed after a delay of more than ten years. Trial Court has rightly not exercised its discretion in favour of the petitioner.

11. There is no illegality or impropriety in the impugned order passed by the trial court. I, therefore, find no merit in the petition.

12. Petition is accordingly dismissed.

RAVINDER DUDEJA, J.

DECEMBER 18, 2024

RM



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