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

+ RSA 118/2025, CM APPL. 48877/2025

NIRMALA DEVI & ANR.Appellants

Through: Counsel (appearance not given).

versus

RAKESH KUMAR JAIN & ORS.Respondents

Through: Mr. Mridul Jain, Advocate for R-1
and R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **08.08.2025**

CM APPL. 48827/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

CM APPL. 48828/2025 (condonation of delay in re-filing)

By way of the present application filed under section 151 of the Code of Civil Procedure 1908 ('CPC'), the appellant seeks condonation of about 51 days' delay in *re-filing* the regular first appeal.

2. For the reasons stated in the application, which is duly supported by affidavit, the delay in *re-filing* is condoned.
3. The application is allowed and disposed-of.



RSA 118/2025 & CM APPL. 48877/2025 (stay)

4. By way of the present regular second appeal filed under section 100 of the Code of Civil Procedure 1908, the appellants impugn judgment and decree dated 12.02.2025 passed by the learned JSCC-ASCJ-Guardian Judge, North-East, Karkardooma Courts, Delhi in suit bearing RCA SC No.8/18, whereby the learned First Appellate Court has dismissed the appeal filed against judgment and decree dated 23.01.2018 passed by the learned trial court, in a suit filed by the respondents seeking declaration and prohibitory injunction.
5. *Vide* judgment and decree dated 23.01.2018, the learned trial court has decreed the suit filed by the respondents, thereby declaring the revocation deed dated 19.03.2014 signed by appellant No.1 (purporting to cancel GPA dated 11.06.1996 granted by her in favour of respondents Nos. 1 and 2) to be null and void. The learned trial court has held that the GPA set of documents were executed for consideration, and therefore, could not have been unilaterally cancelled by appellant No.1; and furthermore, since appellant No.1 had transferred all her rights in the suit property in favour of the respondents, she did not have the right to dispossess them or create any third-party rights in the suit property.
6. Learned counsel for the appellants submits, that agreement to sell dated 11.06.1996 alongwith the ancillary documents, including affidavit and receipt of Rs. 40,000/- relied upon by the respondents, was never executed by appellant No.1. It is the appellants' case that appellant No.1 had only executed the General Power of Attorney



(without consideration) and Will dated 11.06.1996, both of which were also registered, for the limited purpose of arranging the installation of an electricity meter in the suit property; and that receipt for the sum of Rs. 40,000/- was a separate loan transaction between the parties.

7. In this backdrop, learned counsel for the appellants draws attention to the proposed questions of law set-out in the memo of appeal.
8. However, upon perusal of the proposed questions of law sought to be raised by the appellants, it is noticed that the questions relate essentially to (i) the alleged non-execution of the agreement to sell (which also contains a contingency clause bequeathing the suit property upon respondent Nos 1 and 2 on the death of appellant No.1); and (ii) the execution of the GPA and the Will. These questions have been dealt with and answered by the learned trial court on the basis of the evidence on record; and the view taken by the learned trial court has been upheld by the learned First Appellate Court.
9. It is also important to note, that in the course of trial, appellant No.1, who is supposed to have executed all the documents in question, never stepped into the witness box; and this aspect has also been duly considered by the learned trial court.
10. In this regard, the following observations and findings of the learned trial court contained in judgment dated 23.01.2018 are required to be noted:

“22. In order to prove their case, plaintiffs themselves appeared in the witness box and tendered their evidence by way of



affidavits. During cross-examination, these witnesses remained firm. These witnesses filed original documents. Perusal of these documents shows that defendant Smt. Nirmala Devi had transferred all her rights in favour of the plaintiffs for a sum of Rs. 40000/- in the suit property. The defendants have not denied that signatures appearing on these documents does not belong to Smt. Nirmala Devi, rather it is claimed that these documents were got signed by plaintiffs from Smt. Nirmala Devi on the pretext of getting electricity connection. **Since, defendants had admitted that Smt. Nirmala Devi had signed these documents, onus to prove that plaintiffs had got signature of Smt. Nirmala Devi by way of deceit and fraud was upon the defendants. In order to discharge this burden no evidence has placed on record by defendants except defendant no. 2.** In order to discharge this burden, defendants ought to have examined Smt. Nirmala Devi, however, Smt. Nirmala Devi did not appear in the witness box.

“23. The testimony of Smt. Nirmala Devi was very important as only she could have thrown light regarding the real nature of transaction between the parties, but, neither she appeared in the witness box, nor any plausible explanation is given for her non-appearance in the witness box. No evidence has been proved on record to show that she was not in condition to appear in the witness box as witness. **Since, defendant Smt Nirmala Devi herself has not appeared in the witness box nor any evidence is proved on record (sic) for explaining the reason of her non-appearance as witness, the adverse view is taken against defendants that she deliberately avoided cross-examination.**

“24. Furthermore, it is averred by DW-1 that plaintiffs took the signature of Smt. Nirmala Devi who is an illiterate lady on the documents in question on the pretext of getting electricity connection, however it is very important to note here that these documents bears the signatures of DW1 as one of the attesting witness. DW1 failed to deny that these documents are not bearing his signatures. DW1 is the son of Smt. Nirmala Devi and the sole witness of the defendant regarding the nature of transaction. His signature on documents in favour of plaintiff contradict the claim of



defendants that plaintiffs got the signature of defendant Nirmala Devi by playing fraud upon her on the pretext of getting electricity connection. Now, even, if, it is assumed that Smt. Nirmala Devi was not having any understanding regarding the contents of documents, still, DW.1 ought to have explained under what circumstances, he signed these documents as witness, however, he failed to state that even he was misled by plaintiffs. The fact that DW1 was one of the witness on the alleged documents by itself shows that defendants have taken false plea that plaintiffs misled Smt. Nirmala Devi and thereby took her signatures on the documents in question.

“25. The GPA executed by Smt Nirmala Devi in favour of plaintiffs was duly Registered before the Registrar. The onus was upon the defendants to explain as to what prompted the defendant Nirmala Devi to go to office of Sub-Registrar and execute registered GPA, when the purpose of executing the GPA was merely to help the plaintiffs to get a electricity connection. It is highly unbelievable that anyone would execute a registered GPA in favour of other in order to facilitate the installation of electricity connection.”

(emphasis supplied)

11. Accordingly, this court is unable to discern any question of law, muchless any substantial question of law, that arises in the present appeal.
12. There is accordingly no basis to entertain the present regular second appeal, which is hereby dismissed.
13. Pending applications, if any also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 8, 2025/ak