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

% **Date of Decision: 16th April, 2025**

+ CM(M) 685/2025 & CM APPL. 22124-22126/2025

MAYA DEVI AND ORSPetitioner

Through: Mr. Sudhir Kumar Mehra with Mr. Surendra and Mr. Mohd. Adnan and Ms. Aarti, Advocates.

versus

VEERMATIRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners are defending a petition, which seeks probate.
2. While defending the above said probate petition, the petitioners herein also submitted their *written statements-cum-objection*.
3. Fact remains that when the matter was taken up by the learned Probate Court on 08.12.2017, their defence was struck off.
4. After the evidence of the plaintiff was closed, petitioner herein moved an application under Order XVIII read with Section 151 CPC seeking permission to lead evidence in the matter.
5. Such application has been dismissed by the learned Trial Court *vide* order dated 11.02.2025.
6. Such order is under challenge.
7. This Court has gone through the impugned order whereby the learned Trial Court has, in no uncertain terms, observed that the defence of the respondents had been struck off already and they had not even cared to file any application seeking recall of such order. It further observed that since the defence had already been struck off, the petitioners herein had, thus, failed to



justify as to how they were entitled to lead evidence, unless and until such order dated 08.12.2017 was recalled.

8. The copy of application moved under Order XVIII read with Section 151 CPC has also been placed on record and it seems quite obvious that the petitioners herein could not put forward its request in the desired manner.

9. Naturally, once defence is struck off, any such party has limited right of participation in any such proceedings. It has a limited right of *cross-examination* of the witnesses of the plaintiff and while conducting such *cross-examination*, it can, merely, point out the falsity, weakness and infirmities in the case of the plaintiff but cannot in the garb of such cross-examination plead their positive assertions. Similarly, though it may have right to address arguments, it doesn't have any right to lead evidence in affirmation, because of the fact that its defence has been struck off.

10. In the present petition, which has been filed under Article 227 of the Constitution of India, it has also been averred as under:-

“34. That to the argument which never was specifically raised before the Ld. Trial Court that there was no specific prayer made in the application to set aside the order dt. 08.12.2017, it is submitted that the Ld. Counsel for the Respondents before the Ld. Trial Court had moved the said application merely in a very short span of about 45 to 50 minutes by, inter alia, drafting, completing the e-filing procedure and submitting that physically before the Ld. Trial Court may inadvertently have forgot to mention that but, the final prayer for allowing the Respondents before the Ld. Trial Court to lead the R.E. for meeting the ends of justice incorporated the same in gist and substance.”

11. Thus, it is quite clear that since the above said application was prepared with some haste, in all probabilities, the appropriate request has not been made before the learned Trial Court and, therefore, the request for the



petitioners herein to enter into witness box has been declined. A request is now made to move appropriate application before the learned Trial Court in this regard i.e. seeking recall of order dated 08.12.2017.

12. This Court, in the abovesaid scenario, when the defence of the petitioners herein had already been struck off, though, does not find any illegality or perversity in the impugned order, in the interest of justice, present petition is disposed of with permission to petitioners herein to move appropriate application seeking to set aside the order dated 08.12.2017 whereby their defence had been struck off.

13. Since the case is listed tomorrow before the learned Trial Court, the petitioners herein would file such application before the learned Trial Court tomorrow itself and learned Trial Court, after giving due opportunity of hearing to both the parties, shall dispose of the same in accordance with law.

14. Petition, along with all pending applications stands disposed of in aforesaid terms.

15. It is, however, clarified that this Court has not made any observation with respect to the proposed application and it will be upto the learned Trial Court to consider the same and then to dispose of the same in accordance with law.

16. A copy of this order be given *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

APRIL 16, 2025/sw/ShS