



2025:DHC:1698



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 17th March, 2025**
+ CM(M) 290/2025 & CM APPL. 8346/2025 & CM APPL. 15527/2025
GYAN KAUR & ANR.Petitioner

Through: Mr. Vivek Kr. Gaurav, Mr. Rohit Shukla, Mr. Sunil Parjapati, Mr. Abhay Solanki and Mr. Shahbez, Advocates.

versus

MUKESH KUMARRespondent

Through: Mr. Bishwajit Dubey, DHCLSA and Ms. Gurleen Kaur Waraich, Advocates and respondent in person.

CORAM:**HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. One Mr. Ved Prakash had, allegedly, executed a Will on 10.03.2021.
2. He unfortunately died on 07.01.2023.
3. Mr. Mukesh Kumar, being son of such deceased testator filed a petition under Section 276 of Indian Succession Act, 1925, seeking probate.
4. The petitioners herein are also cited as respondents in said probate petition. Petitioner No.1/Mr. Gyan Kaur is widow of Mr. Umesh Kumar (another son of Ved Prakash) and petitioner No.2 herein is her daughter.
5. The abovesaid petitioners were duly served and even vakalatnama was filed on their behalf on 16.05.2023 and they were granted time to file reply.
6. On the next date of hearing, they prayed for supplying of legible copy of one page and, while directing the respondent to supply such legible copy, the petitioners herein were granted further time to file objection within four weeks.
7. Admittedly the objections were filed by the petitioners but these was



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not filed within abovesaid period of four weeks.

8. Learned Probate Court, while considering the overall facts of the case, refuse to take such objections on record. It also observed that along with such objection petition, the objectors had not even filed any application seeking condonation of delay. Resultantly, the application moved by the opposite side under Order VIII Rule 10 CPC was also disposed of and the matter was fixed for evidence of the respondent herein.

9. Such order dated 03.02.2024 is under challenge.

10. However, it may also be pointed out that the petitioners had sought recalling of the abovesaid order dated 03.02.2024 and moved an application but such application was also dismissed by the learned Probate Court on 04.05.2024.

11. Mr. Bishwajit Dubey, learned counsel for respondent is present with respondent and submits that the intent and objective of the petitioners herein is to simply delay the proceeding on one pretext or the other. He submits that no justifiable reason has been divulged in the present petition either and, therefore, the present petition also lacks merit and substance and same may be accordingly dismissed.

12. Learned counsel for petitioner, however, submits that immediately after the order dated 03.02.2024, in order to ensure there is no further delay of any kind, the counsel for the objectors had moved an application same day seeking condonation of delay in filing the objection.

13. It is submitted that such application had been filed after taking requisite oral instruction from the concerned objectors and in order to ensure that there is no further adverse order, the abovesaid application was filed, without any affidavit from the side of the objectors. He, thus, submits that there is no



intention to delay the proceedings.

14. This Court is mindful and cognizant of the fact that the petition in question seeks probate and, therefore, it was asked from Mr. Dubey whether on certain conditions, the present petition can be allowed so that the decision of such probate petition is on merits, instead of on technicalities.

15. Mr. Dubey, learned counsel for respondent after taking requisite instructions from the respondent who is present in Court, leaves it to the discretion of the Court to pass appropriate order.

16. There is one more important aspect of the case which this Court cannot resist commenting upon. When the abovesaid probate petition was taken up by the learned Probate Court on 12.11.2024, the two witnesses were present from the side of Mr. Mukesh Kumar and those were examined and discharged. The request for cross-examination was declined on the ground that the defense of respondents therein had already been struck off. This Court would not mince any word in observing that even if the defense had been struck off, any such adversary still has right, *albeit* limited one, to cross-examine on the other aspects including the foundational facts submitted in any such petition and to that extent, the learned Trial Court should not have declined opportunity for cross-examination, merely on the premise that the defense had been struck off.

17. Be that as it may, keeping in mind the overall facts of the case and also the nature of the petition pending before the Probate Court, this Court is of the considered opinion that decision should rather be on merits instead of on technical point. The present petition is thus disposed of with the direction that the *objection petition* filed by the petitioners be taken on record.

18. However, petitioner is also, simultaneously, burdened with cost of



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Rs.10,000/- which be paid to the opposite side within a period of two weeks from today.

19. Needless to say, since the *objection petition* has been permitted to be taken on record, the respondent herein would be at liberty to file response, to such objection petition.

20. The case is reportedly fixed for tomorrow before the learned Probate Court and in view of the abovesaid specific directions, the learned Probate Court is requested to proceed further with the matter in terms of the abovesaid directions.

21. A copy of this order be given *dasti* to learned counsel for both the sides. Learned counsel for respondent herein is also requested to bring the order to the knowledge of the learned Probate Court, tomorrow.

22. The petition stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 17, 2025/ss/shs