

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : PROBATE MATTER

Date of Reserve: November 07, 2008

Date of Order: January 07, 2009

Probate Case 53/1998

Om Prakash Kapoor
Through: Mr. V. Hari Pillai, Advocate

...Petitioner

Versus

The State and Ors.
Through: Mr. Atiar Dey with Mr. Sussha Unni, Advocates for D-2 to D-6.

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

ORDER:

IA No. 8787/08 (condonation of delay)

1. This is an application for condonation of delay in filing the Review Application. For the reasons stated therein, the application is allowed and the delay in filing the review application is allowed. 2. The application stands disposed of. RP No.259/2008 1. The applicant/petitioner had filed a probate petition under Section 276 of the Indian Succession Act for grant of Probate in relation to the Will dated 1st May 1980 by deceased Smt. Malan Devi who died on 21st December 1991. All Lrs of deceased Smt. Malan Devi were made a party apart from the State. None of the Lrs raised any objection qua grant of probate to the petitioner. Rather the Will was supported by other Lrs and the petitioner also examined attesting witnesses of the Will to prove it. However, neither the original Will nor the certified copy of the Will were on record and only a photocopy of the Will was placed on record. This

Court, finding that neither the original Will nor the authenticated copy of the Will obtained from Sub-Registrar Office was placed on record, dismissed the Probate Petition vide order dated 15th May 2008.

2. The petitioner has filed the present review application stating therein that due to inadvertent error of the newly appointed counsel for the petitioner, the original Will or an authenticated copy could not be brought on record. Along with the present review application, a duly certified copy of the Will obtained from Sub Registrar's Office has been filed. It is prayed that the Court should exercise its power under review and allow the Probate Petition since now the authenticated certified copy has been placed on record.

3. Counsel for the applicant/petitioner relied upon 2000 (6) SCC 224 Lily Thomas v. Union of India and others wherein the Supreme Court observed that an error apparent on the face of record [and by extension 'mistake' or 'other sufficient reasons' cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be determined judicially on the basis of facts of each case. The Supreme Court in 2005 4 SCC 741, BCC and another v. Netajai Cricket Club and Ors had observed that review would be maintainable not only upon discovery of new and important piece of evidence, but also if the same is necessitated on the ground of some mistake of other sufficient reason.

4. It is submitted by counsel for the petitioner that since in the present case the newly appointed counsel discovered his mistake of not producing original Will or authenticated copy of Will, later on the review application should be allowed. It is also submitted that the Will, certified copy of which has been produced, was unopposed, uncontested by all the Lrs and there could be no doubt about its genuineness since it was registered in 1980 about 28 years back.

5. Notice of the application was issued to the respondent/non applicant who appeared and supported the application of the petitioner. Keeping in view the fact that the Will of which Probate is sought, is a registered Will and all the Lrs of the deceased have subscribed to its genuineness and it has also been proved by examination of attesting witnesses and now a certified copy has been placed on record, I consider that this review application should be allowed as the applicant has explained sufficient reasons for the inadvertent mistake committed by the previous counsel.

6. In the result, the review application is allowed. The order dated 19th May 2008 passed by this Court is modified and paragraph 3 of the judgment shall now read as under: '3. The petitioner has placed on record the certified copy of the Will which was duly registered with the Sub Registrar's Office on 2nd May 1980 in Book No.989 Additional Volume III as document NO.159 Page No.19 and in view of the fact that the Will has been proved by examining the attesting witnesses, I have no doubt about the genuineness of the Will. The Probate is granted to the Petitioner in respect of the Will, as certified copy of which has been produced and placed on record from the Sub-Registrar's Office.'

7. The petitioner shall file requisite court fees for grant of letter of probate.

Sd/-
SHIV NARAYAN DHINGRA J.