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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 04.12.2023*

+ TEST.CAS. 17/2023, I.A. 4359/2023 (interim relief) & I.A. 4360/2023 (restitution)

VIKAS MALHOTRA Petitioner

Through: Mr. Sanjeev Mahajan with Mr. Rishabh Varshney, Mr. S.S.Chadha, Advs. alongwith petitioner in person,

versus

THE STATE OF NCT OF DELHI & ORS. Respondents

Through: Mr. Kanak Bose, Adv. for R-2.

Mr. Karan Nagrath, Ms. Nupur Kumar, Mr. Ambuj Tiwari, Ms. Muskal Nagpal, Mr. Arjun Nagrath, Advs. for R-3.

Mr. Y.P.Narula, Sr. Adv. with Mr. Abhey Narula, Adv. for R-4 & 5.

Mr. Ujas Kumar, Adv. for R-7.

Ms. Damini Chawla, Adv. for R-8 & 9.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****REKHA PALLI, J (ORAL)****I.A. 23155/2023**

1. This is an application filed by the respondent nos. 4 & 5 seeking condonation of 85 days delay in filing objections by way of a reply to the probate petition. As the objections have been filed after 85 days of the expiry of the six weeks' time granted by this Court vide its order dated 06.07.2023, the present application seeking condonation of the aforesaid period of 85 days has been filed.

2. In support of the application, Mr. Y.P.Narula, learned senior counsel



for the applicant submits that the reply could not be filed within the time granted by this Court as the respondent no.5, who is the mother of respondent no.4 was not in a position to give appropriate instructions on account of her ill-health. Furthermore, taking into account that the parties have been involved in a previous litigation for many years, complete details of the past proceedings were necessary to file an effective response, which the respondent no.5 was not able to give either to respondent no.4 or to their counsel for drafting of the objections to the petition.

3. The application is vehemently opposed by the learned counsel for the petitioner as also for the respondent nos.2, 3, 8 and 9. While the petitioner opposes the application not only on the ground of insufficiency of reasons for seeking condonation of delay but also on the ground that this Court has no power to condone the delay in case the reply is filed beyond 120 days, the respondent nos. 2,3,8 & 9 oppose the application only on the ground of insufficiency of reasons.

4. Mr. Mahajan, learned counsel for the petitioner submits that on 06.07.2023, this Court had granted six weeks time from the date of service of the amended petition to the respondents to file a reply. The respondents, having been served with a copy of the amended petition on 13.07.2023, have chosen to file their reply only on 19.11.2023, i.e., after the 120 days period prescribed in Chapter VII of the Delhi High Court (Original Side Rules), 2018 (hereinafter, 'Rules') had already expired on 10.11.2023.

5. By drawing my attention to Section 295 of the Indian Succession Act (hereinafter the 'Act'), he submits that in cases where a 'Will' is contested, the proceedings of the testamentary petition, which are otherwise governed by Chapter XXIX of the Rules are required to be carried out as a regular suit



to which Chapter VII of the Rules is clearly applicable. He further submits that since the respondents had on 14.03.2022 itself, when the present petition was listed for preliminary consideration, raised a plea that the Will was not valid, it was evident right from the day one that this was a contested matter wherein the respondents were required to file their reply(s) within a maximum period of 120 days. He, therefore, contends that this Court has no power to condone the delay beyond 120 days in filing of objections by respondent nos. 4 and 5

6. He further submits that even the grounds mentioned by the applicants seeking condonation of delay are extremely vague and not borne out from the record. The applicants have not annexed any medical documents in support of their plea that the objections could not have been filed due to the ill-health of respondent no.5. Furthermore, even the present application seeking condonation of delay has been signed by respondent no.4 alone, who, even as per the case of the applicant, was not suffering from any medical problem. The respondent no.5, who it is claimed was unwell, has neither signed the application nor the supporting affidavit and therefore the applicants cannot seek any advantage of the purported illness of respondent no.5. He, therefore, prays that the application be dismissed.

7. Learned counsel for the respondent nos.2, 3, 8 & 9 also adopt the submissions made by Mr. Mahajan to contend that the grounds furnished by the applicants seeking condonation of delay are insufficient. They, therefore, also seek dismissal of the application.

8. In response, learned senior counsel for the applicant, by drawing my attention to a decision of a Co-ordinate Bench in *Malini Mehra vs. State of NCT of Delhi and Ors* MANU/DE/1128/2022, submits that this Court has



already held that the provisions of the Chapter VII of the Rules are not applicable to testamentary cases. Furthermore, merely because Section 295 of the Act provides that proceedings in a contested testamentary case are to be held in the form of a regular suit in accordance with the Code of Civil Procedure, 1908, it cannot be said that the strict rigours of Chapter VII of the Rules, as applicable to a civil suit would automatically apply to testamentary petitions.

9. Having considered the submissions of the learned counsel for the parties, I find that two issues arise for my consideration in the present application. The first being regarding the petitioner's plea that this Court does not have the power to condone the delay in filing of the objections/reply to the petition beyond 120 days from the date of service of the amended petition. The second being whether the grounds raised by the applicants, in the present case, are sufficient for condoning the delay of 85 days in filing the objections to the petition.

10. Having perused the provisions of both Chapter VII and Chapter XXIX of the Rules, I am inclined to accept the plea of Mr. Y.P.Narula that merely because Section 295 of the Act provides that proceedings in a contested testamentary petition are required to be conducted as a regular suit would not imply that Chapter VII of the Rules would automatically be applicable to testamentary petitions. Infact, what emerges is that taking into account the special nature of this testamentary jurisdiction where the Court is required to give effect to the wishes of a person who is no longer available to express his/her desire, Chapter XXIX of the Rules does not provide for any such strict timelines as are applicable to a civil suit which is governed by Chapter



VII. Even otherwise, I also find that the provisions of Section 295 of the Act merely state that the proceedings in a contested testamentary petition, shall, as nearly as possible, be held as a civil suit. Mr. Mahajan is therefore incorrect in urging that a testamentary petition is to be tried exactly like a civil suit or that the rigid timelines which are applicable to a civil suit must be applied to a testamentary petition as well. I am, therefore, of the view that while dealing with a testamentary petition, the endeavour of the Court should be not to reject the objections on technical grounds, unless it is found that the same is filed with an inordinate delay.

11. In this regard reference may be made to para 11 to 18 of the decision in *Malini Mehra (supra)*, on which reliance has been placed by the learned senior counsel for the applicants, wherein the Court, after considering the provisions of Section 295 of the Act as also chapter VII and XXIX of the Rules, held as under:

“11. A perusal of the Rules in Chapter VII along with its title clearly demonstrates that the said chapter is applicable only in respect of civil suits filed before this Court. Rule 5, as aforesaid, provides that replication, which is to be filed within 30 days, can only be filed in an additional period of 15 days and not thereafter. After expiry of the aforesaid period of 45 days (30+15 days), the plaintiff forfeits his right to file replication, as observed by the Division Bench in Ram Sarup Lugani (supra).

Chapter XXIX of the Delhi High Court (Original Side), Rules, 2018 is titled “Testamentary and Intestate Jurisdiction” and specifically deals with testamentary cases. Rules 1 and 2 of Chapter XXIX provide for the manner in which petitions for grant of probate or letters of administration have to be filed. The said chapter does not provide for any time limits for filing objections to the petition or for filing reply to the objections / rejoinder.



There are also no time limits provided under the Indian Succession Act in respect of filing objections to the petition or for filing reply to the objections/rejoinder. Therefore, it is the discretion of the Court to fix the time limits in respect of filing objections or replies thereto. Of course, this discretion has to be exercised by the Court in a judicious manner.

13. Since Chapter VII itself is not applicable to testamentary cases, clearly, Rule 5 of the aforesaid chapter cannot be made applicable to testamentary cases. Further, Rule 5 only makes a reference to “replication” in a suit and not “rejoinder/reply to objections” to be filed in a testamentary case. Rule 5 of Chapter VII provides for a drastic consequence of the right to file replication being closed if it is not filed within 45 days. In my view, by implication, this rule cannot be applied to testamentary cases, when such a rule has specifically not been made applicable to testamentary cases.

14. Counsel for the petitioner has relied on Section 295 of the Indian Succession Act, which is reproduced hereinbelow:

“295. Procedure in contentious cases.—In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Civil Procedure Code, 1908 (5 of 1908) in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.”

15. Section 295 provides that in contentious testamentary cases, proceedings shall be in the form of a regular suit and in accordance with the Civil Procedure Code, 1908. However, whether or not the proceedings are contentious can only be determined after pleadings in the case are completed. Therefore, Section 295 would come into play only after competition of pleadings and cannot be relied upon to contend



that the time limits for filing replication, as provided in the Delhi High Court (Original Side), Rules, 2018, would also apply to testamentary proceedings.

16. Counsel for the petitioner has drawn my attention to Rules 14 and 16 of Chapter I of the aforesaid Rules, which are set out below:

“14. Court's power to dispense with compliance with the Rules.—

The Court may, for sufficient cause shown, excuse parties from compliance with any requirement of these Rules, and may give such directions in matters of practice and procedure, as it may consider just and expedient.

[Provided where the Court/Judge is of the opinion that Practice Directions are required to be issued, he may make it suitable reference to the Hon'ble Chief Justice.]

...

16. Inherent power of the Court not affected.—
Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court.”

17. The aforesaid Chapter and the rules set out above would be applicable to all cases falling under the Original Side jurisdiction of this Court, which would, besides civil suits, also include testamentary cases.

18. Rules 16 gives inherent powers to the Court to pass such orders that may be necessary for the ends of justice to be met or to prevent failure of justice. This does not mean that in every case, rejoinder/reply to objections can be allowed to be filed at any stage. The Court would have to be satisfied with



the reasons given by the petitioner for delay in filing the rejoinder/reply to objections”

12. I, therefore, find absolutely no merit in the petitioner’s plea that such an application seeking condonation of delay in filing the objections beyond 120 days is not maintainable or that the Court can, in no circumstances condone the delay in filing of objections which are filed beyond 120 days from the date of service of the petition.

13. Now coming to the second issue regarding the sufficiency of the grounds set out by the applicants. As noted hereinabove, the primary plea of the applicant is that the respondent no.5, who is one of the two objectors, is about 81 years of age and due to her ill-health could not give appropriate instructions to either respondent no.4, the other objector, who is her son or to her counsel. Learned senior counsel for the applicant has vehemently urged that taking into account the previous inter se proceedings between the parties, which were being actively pursued by respondent no.5, meaningful objections could not have been filed by respondent no.4 till comprehensive instructions were received from respondent no.5, who due to her ill-health was unable to give the necessary instructions.

14. Even though the learned counsel for the petitioner as also the learned counsel for the respondent nos.2, 3, 8 & 9 are correct in urging that respondent no.4, who was not stated to have been suffering from any medical problems could have filed the objections in time, I am of the view that while exercising this special jurisdiction where grant of probate of the Will, as sought by the petitioner, is likely to drastically change the entire line of succession of the testator, a rigid or a hyper technical view ought not



to be adopted. Once it has been specifically pleaded that taking into account the previous litigation between the parties, it was necessary for the respondent no.5 to collate the entire material and give appropriate instructions to her son, i.e., the respondent no.4, which she could not do on account of her ill health and advanced age, there is no reason to disbelieve this plea of the applicants. Furthermore, I cannot lose sight of the fact that though the objections have been filed belatedly, there is no such gross delay even as per the petitioner, the same have been filed within 9 days after the expiry of the 120 days period.

15. For the aforesaid reasons, the application deserves to be allowed and is, accordingly, allowed. The delay in filing the objections by respondent nos. 4 & 5 stands condoned. Consequently, the objections filed by these respondents are taken on record. Reply thereto, if any, by the aggrieved parties be filed within six weeks. Rejoinder thereto, if any, be filed within four weeks thereafter.

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16. List before the learned Joint Registrar(Judicial) on 14.02.2024 for admission/denial of documents and filing of joint schedule of documents by the petitioner.

17. List before the Court on 27.03.2024.

(REKHA PALLI)
JUDGE

DECEMBER 4, 2023

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