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

+ **CS(OS) 464/2019**

UMESH CHANDER SHARMA & ANR.Plaintiffs

Represented by: Mr.Ankit Gupta, Advocate.

versus

NARESH SHARMA & ORS

..... Defendants

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **11.09.2019**

I.A. No.12446/2019 (Exemption)

Allowed, subject to all just exceptions.

I.A. No.12448/2019 (Delay)

1. By this application though the plaintiffs claim condonation of delay in filing the accompanying plaint however, the case of the plaintiffs is that this application has been filed by way of an abundant caution and there is no delay in filing the present suit. The plaintiffs had filed the suit for partition of the property left behind by their deceased father before the District Court however, on an application filed by the plaintiffs under Order VI Rule 17 CPC being allowed, the District Court did not have the pecuniary jurisdiction to try the said suit and hence the plaint was returned to be refiled before this Court.

2. Learned counsel for the plaintiffs submits that the plaint was returned vide order dated 30th May, 2019 and on 1st June, 2019 itself the plaintiffs

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applied for the certified copy of the plaint so that after submitting the same the plaintiffs could get the original plaint to file the same before this Court. The certified copy of the plaint was made available to the plaintiffs only on 19th July, 2019 as there were summer vacations and on receipt of the original plaint after filing the certified copy before the learned District Court, the plaintiffs filed the present plaint before this Court on 19th August, 2019, that is, within 30 days of obtaining the original plaint.

3. Considering the facts stated above and the legal position as held in (1991) 1 SCC 685 Ram Ujarey Vs. UOI that the period of limitation runs from the date the plaint is returned and not from the date of the order by which the plaint is directed to be returned, application is disposed of taking the plaint on record as there is no delay in filing the plaint before this Court.

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1. Plaint be registered as a suit.
2. Issue summons to the defendants on the plaintiffs taking steps through ordinary and dasti process returnable on 30th October, 2019 before the learned Joint Registrar for completion of service, pleadings and admission/denial of documents.
3. Summons to the defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days of the receipt of the summons. Liberty is given to the plaintiffs to file a replication within three weeks of the receipt of the advance copy of the written statement.
4. Parties shall file all original documents in support of their respective claims along with their respective pleadings. In case parties are placing reliance on a document which is not in their power and possession, its detail

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and source shall be mentioned in the list of reliance which shall be also filed with the pleadings.

5. Admission/ denial of documents shall be filed on affidavit by the parties within three weeks of the completion of the pleadings. The affidavit shall include the list of the documents of the other party. The deponents shall indicate their position with regard to the documents against the particulars of each document.

6. List the suit before Court on 9th January, 2020.

I.A. No.12447/209 (under Order XXXIX Rule 1 and 2 CPC)

1. Issue notice to the defendants on the plaintiffs taking steps through ordinary and dasti process, registered AD and Speed Post, returnable on 30th October, 2019 before the learned Joint Registrar for completion of service and pleadings.

2. List the application before the Court on 9th January, 2020.

3. Since from the averments in the plaint, the plaintiffs have made out a prima facie case that the deceased father of the plaintiffs and defendants passed away intestate and thus each of the plaintiffs and defendants are entitled to their share in the property, parties are directed to maintain status quo with regard to possession and title in respect of House No.35, Ishwar Colony, Near Kirpal Bagh Ashram, Delhi (in short 'the suit property') till the next date.

4. Compliance under Order XXXIX Rule 3 CPC be made within one week.

5. Order dasti.

MUKTA GUPTA, J.

**SEPTEMBER 11, 2019 /‘vn’
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