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

+ **FAO(OS) 5/2025, CM APPL. 3941/2025-Stay, CM APPL. 3942/2025-Delay 104 days in re-filing, CM APPL. 3943/2025-Exp**

SHRI OM PRAKASH ARORA

.....Appellant

Through: Mr J.S. Bakshi, Sr. Adv. with Mr. Praveen Kumar, Mr. Harsh Priya and Mr. Amolak Singh, Adv.

versus

M/S YASHNA EXPORTS PVT. LTD. & ORS.Respondents

Through: Mr. Sanjeev Sindhwani, Sr. Adv. with Mr. Sanjay Dua, Adv. for R-1 to R-4.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

30.01.2025

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1. The present appeal under Section 10 of the Delhi High Court Act, 1966 seeks to assail the order dated 29.07.2024 passed by the learned Single Judge in an application filed by the appellant under Section 151 of the Code of Civil Procedure, 1908 (I.A. No. 6501/2024) in CS(OS) 1459/1995. Vide the impugned order, the learned Single Judge has dismissed the said application whereby the appellant was seeking setting aside/ recall of the Compromise Decree dated 20.09.2002 in terms of the settlement between the parties therein, passed pursuant to their joint application qua the shares and possession of the property bearing no. 21 and 21A, Tughlaq Road, New Delhi ('suit property').



2. We find that the primary plea of the appellant before the learned Single Judge was that the Compromise Decree had been passed in ignorance of the provisions of Section 44 of the Transfer of Property Act, 1882, and was therefore liable to be set aside/ recalled.

3. At the outset, we have put to learned senior counsel for the appellant that, taking into account that the very own case of the appellant is that he owns 6.25% share in the suit property on the basis of a Will and Agreement to Sell executed by the wife of one of the original co-owners namely Smt. Rajamma S. Madden (since deceased), and when, admittedly, the probate of the said Will stands revoked, can the appellant be permitted to pursue the present appeal at this stage.

4. Learned senior counsel for the appellant submits that an appeal assailing the revocation order qua the probate of the said Will has already been filed and is pending before this Court. He further submits that the appellant is hopeful of succeeding in the said appeal. He, therefore, prays for time to obtain instructions.

5. At request, list on 17.03.2025.

REKHA PALLI, J

SAURABH BANERJEE, J

JANUARY 30, 2025/akr