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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TEST.CAS. 65/1996, IA No.7060/2005 (u/S 269 of Indian Succession Act, 1925) & IA No.1457/2016 (u/O XIV Rule 5 CPC)
ASHA LATA GUPTA Petitioner

Through: Ms. Sumati Anand, Adv.

Versus

THE STATE & ORS. Respondents

Through: Mr. Sudhir K. Makkar, Sr. Adv. with
Ms. Meenakshi Singh & Mr. Hars
Prakash Advs. for R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.11.2016**

1. This order is in continuation of the earlier orders dated 11th August, 2016 and 19th September, 2016.
2. The counsel for the petitioner states that the petitioner is a resident of Nagpur and has been unable to come to Delhi for health reasons.
3. On enquiry, it is informed that though the petitioner in this petition seeking probate of the document dated 17th May, 1990 as the validly executed last Will of the deceased Mrs. Kishore Kanti Khandelwal has filed affidavits by way of examination-in-chief of herself as well as of one attesting witness of the said document but neither of the said affidavits have been tendered in evidence till date.
4. On enquiry, it is informed that the attesting witness is resident of Delhi.
5. On further enquiry as to why the attesting witness has not been examined as yet, it is informed that the petitioner was intended to be examined first.

6. The aforesaid contention cannot be accepted. In a petition seeking probate of a document as a Will, it is the testimony of the attesting witness which is relevant and the rule of the petitioner examining himself / herself first, does not apply.
 7. The counsel for the petitioner then states that the attesting witness could not be examined because the Registry informed that the affidavit by way of examination-in-chief of attesting witness had been lost.
 8. Even if it was so, another affidavit could have been filed.
 9. Even if it were to be believed that the petitioner could not travel to Delhi, a Commission could have been obtained for examination of the petitioner at Nagpur.
 10. In the aforesaid circumstances and for the reasons contained in the order dated 11th August, 2016, I invoke my powers under Section 271 of the Indian Succession Act, 1925 to refuse to entertain this petition on the ground that it can be more justly and conveniently considered by another Court i.e. the Court at Bombay within whose jurisdiction the deceased was ordinarily resident of and within whose jurisdiction the immovable property of the deceased is situated and where another petition filed by respondent no.3 Sh. Rajiv Khandelwal has been filed and is lying stayed owing to the pendency of the present petition.
 11. The petition is accordingly disposed of.
 12. The date already fixed of 19th December, 2016 is cancelled.
- No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 15, 2016/‘gsr’..

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