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

+ CM(M) 695/2016

GAURAV AGGARWAL Petitioner
Through Ms.Ruhi Chopta, Advocate.

versus

GENERAL PUBLIC & ORS Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

% **ORDER**
22.07.2016

CM No. 25687/2016 (exemption)

Exemption is allowed subject to all just exceptions.

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The petitioner seeks to impugn the order dated 09.06.2016 passed by the trial court. The petitioner had filed a probate petition seeking probate of a Will dated 30.07.2008. It is further stated that the petitioner with the permission of the court not being able to pursue the probate petition sought withdrawal. Accordingly, by order dated 01.06.2016, the probate petition was disposed of as withdrawn.

The petitioner thereafter moved an application under Order 13 Rule 9 CPC seeking return of the original Will dated 30.07.2008 alleged to have been executed by the testator deceased Vidya Sagar.

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By the impugned order dated 09.06.2016 the trial court held that as per the mandate of Section 294 of the Indian Succession Act, the petitioner is not entitled for release/return of the original Will. Liberty was granted to the petitioner to take certified copy of the Will.

Section 294 of the Indian Succession Act reads as follows:-

“294. Filing of original Wills of which probate or administration with Will annexed granted.—

(1) Every District Judge, or District Delegate, shall file and preserve all original Wills, of which probate or letters of administration with the Will annexed may be granted by him, among the records of his Court, until some public registry for Wills is established.

(2) The State Government shall make regulations for the preservation and inspection of the Wills so filed.”

A perusal of the above provision of law shows that a District Judge shall file and preserve all original Wills, of which probate or letters of administration with the Will annexed may be granted by him. This provision would obviously not apply to a petition where the probate/letters of administration is not granted.

Accordingly, the order dated 01.06.2016, applying the provisions of Section 294 is set aside. The original Will dated 30.07.2008 be returned to the petitioner after following the necessary rules.

The petition stands disposed of.

Dasti.

JAYANT NATH, J

JULY 22, 2016/rb
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