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

+ **CM(M) 828/2016**

VIRENDER SINGH & ORS Petitioners
Through **Mr.Vipin Nandwani, Advocate.**

versus

STATE OF NCT OF DELHI & ANR Respondents
Through **Ms.Sakshi Popoli, Advocate for NCT of Delhi.**

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **29.09.2016**

CM Nos. 31025-26/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 828/2016 and CM No.31024/2016 (stay)

1. By the present petition, the petitioners seek to impugn the orders dated 02.12.2015 and 04.06.2016. On 02.12.2015, the right of the petitioners to lead evidence was closed and on 04.06.2016 an application filed by the petitioners to recall the earlier order dated 02.12.2015 was dismissed.
2. Learned counsel appearing for the petitioners at the outset submits that he has to examine only two witnesses, namely, petitioner No. 1 and Sh.V.K.Khatri, Advocate whose evidence by way of affidavit are already on record. He submits that however, it may be necessary to summon Sh.V.K.Khatri, Advocate. He also points out that the reason for the delay

cannot be attributed to any adjournment sought by the petitioners. He points out that on 27.04.2012 itself the petitioner had filed the affidavit by way of evidence of RW1. Subsequently, by the consent of both the parties on 08.02.2013, the matter was referred to the Mediation Centre and remained pending there for several dates.

3. Learned counsel for respondent No.1/State has entered appearance.

4. An advance copy of the petition has been sent to respondent No.2 but none is present for her.

5. The present petition is filed seeking probate in respect of an alleged Will dated 15.02.1995 of Late sh. Hoshiar Singh. Late Sh.Hoshiar Singh was survived by only two daughters, namely, respondent No.2 and Late Smt.Darshna Devi who is represented by her LRs, namely, the petitioners.

6. Grave prejudice would be caused to the petitioners, if their evidence is shut out. A perusal of the order sheets does not show that the petitioners should be denied the right of an opportunity to lead evidence. Subject to payment of Rs. 5,000/- as costs, the present petition is allowed. The petitioners shall lead their evidence on the dates to be fixed by the trial court without taking any adjournment.

7. The petition stands disposed of.

JAYANT NATH, J

SEPTEMBER 29, 2016
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