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

+ **CM(M) 907/2016**

ASHEESH VADERAA

Through

Mr.Sandeep

..... Petitioner

Aggarwal

&

Mr.Ravikesh Sinha, Advocates

versus

STATE & ORS

..... Respondents

Through

Mr.Devvrat, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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14.09.2016

CM No. 33376/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 907/2016

1. By the present petition, the petitioner seeks to impugn the order dated 02.07.2016 by which the application filed by the petitioner under Section 151 CPC for summoning of witness Dr.S.K.Thakur was dismissed.
2. Respondent No.2 has filed the present petition for grant of probate/letter of administration of the will dated 05.02.2003 of Late Sh. Karuna Raj Vadera. The only person who has filed objection to the said petition is respondent No.3. Petitioner, respondent No.3 and respondent No.4 are the brothers whereas respondent No.5 is the wife of respondent No.4 and respondent No.6 is the wife of the petitioner.
3. The petitioner filed an application under Section 151 CPC for adducing evidence of his witness. The petitioner has sought to examine

Dr.S.K.Thakur who was treating the testatrix during the relevant time in Moolchand Hospital. It was urged that the testimony of the said witness is extremely relevant to determine the condition of the testatrix who executed the will.

4. The trial court by the impugned order dated 02.07.2016 noted that the petitioner has filed no objections to the petition and supported the case of respondent No.2 on all the issues framed. Hence, the application for summoning of witness Dr.S.K.Thakur was dismissed.

5. The learned counsel appearing for the petitioner submits that the courts have the power under Section 151 CPC to summon on its own material witness. He submits that although he is supporting the case of respondent No.2 before the trial court, it is only for the purpose of doing complete justice that he seeks to examine the said witness.

6. A perusal of the application filed by the petitioner before the trial court shows that the witness sought to be examined was as his own witness. Liberty is granted to the petitioner to move a fresh application requesting the trial court for appropriate direction for examining the said witness as his court witness.

7. The present petition stands disposed of granting leave and liberty as stated.

JAYANT NATH, J.

SEPTEMBER 14, 2016/v