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

+ **FAO(OS) 18/2017 & CM No.1966/2017 (*stay*)**

HARSHARAN SINGH Appellant
Through: Mr. Jasmeet Singh with Ms. Astha
Sharma, Advs.

versus

STATE & ANR Respondents
Through: Mr. Jagjit Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER
08.05.2017

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1. The appellant is aggrieved by order of the learned Single Judge, directing the respondent (who had also preferred Testamentary Case No.39/2000) to permit to produce, an independent handwriting expert, to depose in support of his claim. Both parties to this appeal had set up rival 'wills' – the first by the appellant dated 01.05.1972 and the second by the respondent dated 30.05.1991. Concededly, the respondent had admitted to the prior 'will' but contended that the 'will' propounded by him was the last one and therefore prevailed over the earlier disposition. The two proceedings were concealed by previous order of the Court which had then required the parties to lead evidence by way of affidavits and permitted cross-examination of witnesses. The petitioner closed his evidence after the

respondent's examining some witnesses. In rebuttal to the respondent's evidence, the petitioner relied upon the deposition of a handwriting expert. This resulted in an application, by the respondent seeking liberty to produce another handwriting expert. The learned Single Judge acknowledged that the respondent could not claim a right to produce such witness given that he had closed his evidence. At the same time, the Court was of the opinion that the respondent could examine the handwriting expert, subject to payment of costs.

2. Learned counsel for the appellant urges that given the fact that Order 18 Rule 17A Code of Civil Procedure (CPC) was deleted, a party cannot apply to the Court for liberty to produce evidence in rebuttal of a rebuttal evidence as is sought in the present case. He relied upon the judgment reported as *K.K. Velusamy v. N. Palanisamy* (2011) 11 SCC 275 and submitted that the exception carved out by the Court in that case pointed to specific situations where during the interregnum between the conclusion of evidence of the hearing of a suit, a party comes across vital evidence which it would otherwise have been not in possession of, despite of exercise of due diligence.

3. This Court has considered the submissions of the parties.

4. Concededly, though the respondent did include the handwriting expert in the list of witnesses, for reasons best known after the deposition of the other listed witnesses, he gave up that expert. The appellant in turn, exercising the right granted under Order 18 Rule 3 CPC, led rebuttal evidence by way of handwriting expert's deposition. At that stage, the respondent felt slightly handicapped and approached the Court.

5. This Court is of the opinion that though Order 18 Rule 17A CPC was deleted – as observed in K.K. Velusamy v. N. Palanisamy (supra), the powers under Section 151 were left intact. The appellants' reliance upon the illustrative nature of the power, of Court in certain situations to permit evidence, by way of examination or re-examination of witnesses, cannot be taken to extreme limits. The situation contemplated in the judgment i.e. wherever a party coming across fresh material of witness who it was not aware of when it left its original evidence, as being the only circumstance under which fresh witnesses can be let in, cannot be accepted.

6. This Court is of the opinion that the nature of Section 151 CPC was listed out in Para 12 of the judgment, only to emphasise that even where provisions might have existed earlier but were deleted after the amendment, the Court's power was yet reserved. The sequitur to that logic would mean that the Court is not bereft of discretion, in given situations to permit evidence, after rebuttal evidence by the other party. Exercise of discretion in the given facts of this Court and the opinion of this Court cannot be characterized as unreasonable as to warrant appellate review.

7. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

MAY 08, 2017

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