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

+ **FAO 41/2017**

SHASHI KANT GAUTAM

..... Appellant

Through: Mr. Subodh Kumar, Advocate.

versus

STATE & ORS

..... Respondents

Through: Mr. Deeptakirti Verma, Advocate
with Ms. Aparna Iyer, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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19.05.2017

1. By this first appeal under Section 299 of the Indian Succession Act, 1925 the appellant and who is the petitioner in the court below in the petition seeking probate/letters of administration impugns the judgment of the trial court dated 8.10.2016 dismissing the probate petition. Petitioner also impugns the order dated 14.9.2016 whereby the evidence of the appellant/petitioner was closed.

2. The subject probate petition was filed by the petitioner seeking probate/letters of administration of the Will dated 26.4.2006 executed of Smt. Jai Devi. Petitioner is the son of Smt. Jai Devi. None of the other legal

heirs appeared before the court in spite of service and they were proceeded *ex parte*. Effectively therefore the petition was an uncontested case.

3. Learned counsel for the appellant argues that when the evidence of the petitioner was closed on 14.9.2016 the attesting witness was to lead evidence to prove the Will but that attesting witness was held up, and therefore, he could not appear resulting in the evidence of the petitioner being closed. It is stated that the appellant/petitioner will ensure that entire remaining evidence in the petition in the court below will be completed within three hearings.

4. In view of the above discussion, this appeal is allowed. Impugned judgment dated 8.10.2016 and the impugned order dated 14.9.2016 are set aside and the appellant/petitioner will now get three opportunities to lead evidence in support of his case.

5. Parties to appear before the District & Sessions Judge (North West), Rohini Courts, Delhi on 7th June, 2017 and the District & Sessions Judge will mark the case seeking probate/letters of administration to a competent court for disposal in accordance with law.

VALMIKI J. MEHTA, J

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