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

+ TEST.CAS. 28/2007

RAKESH KUMAR GUPTA Petitioner

Through Mr.Vivek Sharma, Advocate.

versus

STATE & OTHERS Respondents

Through Ms.Neelam Singh, Advocate for R-1.

Ms.Sunita Gupta, Advocate for R-2.

Mr.Ankit Jain, Advocate for R-4.

Ms.Sunita Harish, Advocate for R-7.

Dr.Abhishek Atrey, Advocate for

R-8, R-9 (i) to (iv), R-10, R-11,
R-17, R-18 and R-19.

Mr.Ajay Shekhar, Advocate for R-15.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **12.04.2017**

Counsel for the petitioner at the outset seeks an adjournment on the ground that his client has not been able to contact him and he would be filing an application seeking discharge. This prayer has been opposed. Learned counsels for the respondents point out that time and again adjournments had been taken on this count. Order sheets substantiate this position. This Court is accordingly not inclined to grant adjournment.

I.A.No.2439/2017

This application has been fled under Order III Rule 4(7) read with Section 151 of the Code of Civil Procedure by respondent nos.8,9 (i) to (iv), 10,11,17, 18 and 19 through their counsel seeking a discharge for the reason that no instructions have been received from his clients in spite of best efforts. The documents annexed along

with the application show that the information on this count has been sent to the aforementioned applicants i.e. to respondent nos.8, 9(i) to (iv), 10, 11, 17, 18, and 19, the track report evidencing notices to the respective parties is a part of the record filed along with this application.

Prayer made in the application is allowed. Counsel Dr.Abhishek Atrey is accordingly discharged.

I.A.No.10289/2014 (u/O I Rule 8 CPC) & I.A.No.210/2016 (u/O I Rule 8 CPC)

These are two applications filed by the respondent no.8 and respondent no.10 by virtue of which their prayer is that they should be transposed as petitioners.

None has appeared for them.

This Court notes that in the earlier I.A. (I.A. No.2439/2017) counsel appearing for these parties has been discharged. Since there is no representation on behalf of these applicants, these applications are dismissed in default as also for non-prosecution.

TEST.CAS. 28/2007

The present petition has been filed by Rakesh Kumar Gupta seeking a probate/letters of administration of the Will dated 28.6.2003 of the deceased (late Sandeep Goyal). The petitioner is only an attesting witness to the aforementioned Will. Admittedly he is not a beneficiary in the will. He is also not an executor appointed by the deceased qua the aforementioned Will. The respondents at the outset had taken an objection that this petition is not maintainable having been filed through an attesting witness. On this count respondent nos.4 and

7 had taken distinct objections and had filed independent application (I.A.No.9042/2013 & I.A.No.2036/2014) under Order VII Rule 11 of the Code seeking a rejection of the petition. The other respondents, particularly respondent nos.2 and 3 have also taken objection qua the maintainability of this petition on this count.

This Court notes the provisions of Indian Succession Act, 1925; particularly Section 222 of the said Act which clearly specifies that the probate of a Will can be granted to an executor appointed by the Will which appointment may be express or by necessary implication. This petition has specifically prayed for a grant of probate of the Will of the deceased and the petitioner being only an attesting witness and not fitting into the category of Section 222 of the Indian Succession Act or any other provision of the aforementioned Statute by virtue of which this petition could be maintained, this Court is of the view that this petition is not maintainable. It is dismissed.

I.A.No.9042/2013 (u/O VII Rule 11 filed by respondent no.4)
I.A.No.2036/2014 (u/O VII Rule 11 CPC filed by respondent no.7)

Since the petition has been dismissed, these applications have become infructuous and are accordingly disposed of.

INDERMEET KAUR, J

APRIL 12, 2017
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