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

- CM(M) 113/2017

MAHA SINGH RUHELLA Petitioner

Through Mr.Ashim Vachher and
Mr.P.Piyush, Advocates

versus

STATE & ORS Respondent

Through Mr.Harangad Singh, Advocate for R2

+ CM(M) 146/2017

MAHA SINGH RUHELLA Petitioner

Through Mr.Ashim Vachher and Mr.P.Piyush,
Advocates

versus

STATE & ORS Respondent

Through Mr.Harangad Singh, Advocate for R2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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07.02.2017

CM No.3627/2017 (exemption) in CM(M)113/2017

CM No.4805/2017 (exemption) in CM(M)146/2017

Exemption allowed, subject to all just exceptions.

CM(M) 113/2017 & CM No.3626/2017

CM(M) 146/2017 & CM No.4804/2017

1. Present petition CM (M)113/2017 is filed seeking to impugn the order dated 15.11.2016 and 11.1.2017 whereas CM(M)146/2017 is filed seeking to impugn the order dated 30.1.2017.
2. Respondent No.2 has filed the present petition for grant of Letter of Administration to the Will dated 10.08.2009 allegedly executed by late

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Smt.Sumitra Devi, the mother of the petitioner, respondents No.2 and 3. The petitioner has filed objections to the petition.

3. On 15.11.2016 the respondent No.2 led the evidence of PW-4 Shri Ram Singh Negi one of the attesting witnesses to the Will. Proxy counsel for the petitioner, however, sought an adjournment stating that the main counsel Shri Piyush is busy in connection with his own marriage and that the other counsel Shri Ashim Vachher is out of station. The trial court noted that the witness Shri Ram Singh Negi is suffering from cancer and is a diabetic patient. It noted that the main counsel for respondent No.2 had hardly appeared for cross-examination. Accordingly, it examined PW-4 Shri Ram Singh Negi and discharged him. Thereafter the petitioner filed an application for recall of order dated 15.11.2016. The said grounds were repeated, namely, the marriage of Shri Piyush, counsel for the petitioner, which was scheduled for 9.12.2016. The application was allowed subject to payment of costs of Rs.10,000/- with the condition that the respondent will get issued the summons to the witness i.e. PW-4 Shri Ram Singh Negi and that if the witness does not appear for any reason the evidence shall be taken as read.

4. On 30.1.2017 as PW-4 Shri Ram Singh Negi was not served and the costs of Rs.10,000/- had not been paid the cross-examination of PW-4 was again closed.

5. Learned counsel appearing for the petitioner submits that there has been no delay on the part of the petitioner. He submits that 15.11.2016 was the first date on which PW-4 Shri Ram Singh Negi had appeared and for reasons recorded in the order dated 15.11.2016 he could not be examined by the petitioner. He submits that the subsequent order dated 11.1.2017 is onerous on the petitioner as the witness would not come on a summon

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issued by the petitioner. The said person is a witness of respondent No.2/petitioner and it should be his responsibility to produce the said witness for his cross-examination. He submits that the petitioner is ready to pay the costs and that summons were not served on the witnesses on account of the fact that the address was not complete. The trial court has, he submits, wrongly closed the right of the petitioner to cross-examine the said witness. He further submits that though petitioner and respondent No.3 are the only objectors to the Will, however, this crucial witness, namely, PW-4 who is the only attesting witness produced by the petitioner has not been cross-examined by any of the parties.

6. Learned counsel appearing for respondent No.2 submits that the petitioner is adopting dilatory tactics and delaying the proceedings. He submits that the costs of Rs.10,000/- had not been paid when the matter was listed in court on 30.1.2017.

7. There is merit in the submission of learned counsel appearing for the petitioner that order dated 11.1.2017 was onerous on the petitioner and it was for the respondent No.1/petitioner before the trial court to summon the witness PW-4 Shri Ram Singh Negi. Merely because summons have been sent to the witness and were not served as the address was not complete cannot be a ground to deny an opportunity to the petitioner to cross-examine the said witness. Summoning the witness PW-4 Shri Ram Singh Negi should be the responsibility of respondent No.2. He is a witness of respondent No.2. Further he is a crucial witness as he is the only attesting witness to the Will which has been produced by the petitioner/respondent No.2.

8. In the light of the above, it is in the interest of justice that the said witness be subjected to cross-examination by the parties who are opposing

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the grant of probate petition. Hence, in the interest of justice, the petitioner is granted one last opportunity to cross-examine the witness PW-4 Shri Ram Singh Negi who shall be summoned by respondent No.2 to appear in court. It is, however, clarified that if for some reason the witness on account of his old age or illness finds it difficult to come to the court, any of the parties are free to apply to the trial court for recording of his cross-examination by the petitioner through a Local Commissioner. In case such a Local Commissioner is appointed the costs of the Local Commissioner shall be paid by the petitioner.

9. I may note that in court the petitioner has paid to counsel for respondent No.2 the costs of Rs.10,000/- that were imposed by the trial court on 11.1.2017.

10. With the above, the present petitions stand disposed of and the impugned orders stand modified accordingly. All pending applications if any, also stand disposed of.

11. Dasti.



JAYANT NATH, J

FEBRUARY 07, 2017

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