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

+ CM(M) 168/2017 and CM No. 5576-77/2017

MRIDULA PARTI & ANR Petitioners
Through Ms.Namita Roy, Advocate.

versus

SUSHMA PARTI Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
13.02.2017

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1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 11.01.2017 by which her right to cross-examine PW-2 was closed.

2. The respondent has filed the probate petition under Section 276 of the Indian Succession Act regarding Will dated 30.08.1995 allegedly executed by late Smt. Sneh Late Parti. The trial court vide impugned order noted the submission of the learned counsel for the petitioners that they had moved a transfer petition before the District Judge and they would not cross-examine the witness that day. It also noted that an application for waiver of costs had also been filed by the petitioner which costs had been imposed as the petitioners sought an adjournment. The court noted that the case pertains to year 2012 and issues were framed on 11.07.2016. It also noted that on 03.08.2016 time was granted for cross-examination of the petitioners' witness for 13.09.2016. Noting the various adjournments sought by the

petitioner, opportunity to cross-examine PW-2-Ms.Neelu Jain was closed.

3. Learned counsel for the petitioners has urged that on that date, they only sought a pass over. The trial court has closed the right of cross-examination of the petitioner. She submits that one last opportunity may be granted to cross-examine PW-2. She further submits that the cost imposed by the trial court of Rs.10,000/- on an earlier date i.e. 14.12.2016 was prohibitive and should not have been imposed.

4. An advance copy of the petition has been served on the respondent. However, none is present for the respondent.

5. A perusal of the order sheets would show that the issues were framed only on 11.07.2016. The petitioner had cross-examined PW-1- Smt. Sushma Parti on 09.11.2016. On that date, PW-2 also tendered her affidavit when her cross-examination was deferred. On 14.12.2016 also an adjournment was sought.

6. Keeping in view the submissions made by the learned counsel for the petitioner and in the interest of justice, subject to payment of costs of Rs.10,000/- which have already been imposed by the trial court by its order dated 14.12.2016, a final opportunity is granted to the petitioners to cross-examine PW-2 on the date to be fixed by the trial court. No adjournment shall be given to the petitioners on the date so fixed.

7. In view of the above, the present petition and all pending applications stand disposed of.

8. Copy of the order be given dasti under the signatures of the Court Master.

JAYANT NATH, J

FEBRUARY 13, 2017/rb