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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.320/2017 & CM No.10990/2017 (for stay).
BHUPENDER SINGH Petitioner

Through: Mr. Swaroop George, Adv.

versus

SHANTESHWAR PAL (DECEASED)
THR LRS & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.08.2017

1. This order is in continuation of order dated 20th July, 2017.
2. The petitioner has filed an affidavit of service of respondents no.1(i), 1(ii) and 1(iii) / plaintiffs and states that notice was also couriered to respondent no.1(i) and 1(ii) and which has not been delivered with the report that the addressee has changed the address. It is further stated that the counsel for the respondent no.1 / plaintiffs before the Trial Court has stated that he is no longer the counsel.
3. None appears for the respondents.
4. On enquiry, it is stated that one of the respondents no. 1(i), 1(ii) and 1(iii) / plaintiffs appear before the Trial Court and appeared on 24th July, 2017 also when they were served.
5. The counsel for the petitioner / defendant no.1 in this context also draws attention to order dated 24th July, 2017 in CS DJ No.76667/16 of the Court of Additional District Judge-II (North-West), Rohini Court, Delhi which, in the presence of the respondent no.1(iii) / plaintiff Abhishek Yadav records the pendency of this proceeding before this Court and that the same

is listed today.

6. Therefrom I am satisfied that the respondents no.1(i), 1(ii) and 1(iii) / plaintiffs have been duly served and their non-appearance before this Court is indicative of their not wanting to contest this petition.

7. The respondents no.1(i), 1(ii) and 1(iii) are proceeded against *ex parte*.

8. On further enquiry with respect to the Probate Case mentioned in para 5 of the order dated 20th July, 2017, it is stated that final arguments have been heard therein and the order is to be pronounced on 28th August, 2017.

9. In the aforesaid circumstances, the orders dated 15th September, 2016 and 18th February, 2017 impugned in this petition are set-aside and the petitioner / defendant no.1 is granted an opportunity to lead evidence.

10. On enquiry, the counsel for the petitioner / defendant no.1 states that he is unable to tell how many witnesses the petitioner / defendant no.1 is to examine and he does not know whether any list of witnesses has been filed by the petitioner / defendant no.1.

11. In this view of the matter, it is deemed appropriate to limit the opportunity of the petitioner / defendant no.1 to lead evidence by directing:-

- (i) that the petitioner / defendant no.1 to file affidavit by way of examination-in-chief of himself and not more than one other witness on or before 20th September, 2017 when the matter is listed next before the learned Additional District Judge; and,
- (ii) to on or before 20th September, 2017 also furnish copies of the said affidavit to the counsel for the respondent no.1 / plaintiff.

12. The learned Additional District Judge is requested to, on 20th September, 2017, post the suit for evidence of the petitioner / defendant no.1 and on which date the petitioner / defendant no.1 to produce himself as well as his other witnesses if any at his own responsibility, for tendering of the affidavits by way of examination-in-chief and for cross-examination.

13. If there is any default on the part of the petitioner / defendant no.1, evidence of the petitioner / defendant no.1 shall be closed. If for any reason recording of evidence is not completed on the said date, what has been observed with respect to the said date shall apply with respect to the subsequent dates also.

14. The petitioner / defendant no.1 to pay costs of Rs.10,000/- to the respondent no.1 / plaintiff on 20th September, 2017.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

AUGUST 24, 2017

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