

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

+ **FAO No. 226/2017**

% **19th May, 2017**

DR. MUKULA MOHILE & ORS. Appellants
Through: Ms. Shyel Trehan and Mr.
Rishabh Sharma, Advocates.

versus

STATE & ORS. Respondents
Through: Mr. Rajat Malhotra, Advocate
for R-1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 18928/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

FAO No. 226/2017

1. Learned counsel for the appellants argues that the subject case was an uncontested case seeking letters of administration of the property of the deceased Dr. Jayanta Das. Appellant no. 1/petitioner no.1 was the wife of the deceased and appellant nos. 2 and 3/petitioner nos. 2 and 3 were the son and daughter of the deceased. The only other

natural legal heir of the deceased was the mother, who was respondent no. 2 in the court below and who died during the pendency of the petition. Respondent no. 2/mother Smt. Hina Das was substituted by her legal heirs who had given no objections in favour of the petitioners for grant of letters of administration to the estate of the deceased Sh. Jayanta Das.

2. It is argued that the matter was fixed for evidence only on two occasions, firstly on 12.7.2016 and secondly on 13.10.2016, and on the second date in fact the presiding officer was on leave and the matter was adjourned to 25.1.2017 when the court below closed the evidence of the appellants/petitioners and dismissed the probate petition.

3. In my opinion, the court below has been unnecessarily harsh in closing the evidence of the appellants/petitioners, more so, when the petition was an uncontested petition for grant of letters of administration. In fact, counsel for the appellants has filed in this Court a copy of the affidavit by way of evidence which was attested from the Notary Public on 13.10.2016 but was not filed before the court below on account of lack of diligence on the part of the appellants' lawyer in the court below.

4. In view of the above discussion, the impugned judgment of the court below dated 25.1.2017 is set aside. Appellants will now be entitled to be allowed to lead evidence in support of their claim for grant of letters of administration.

5. Parties to appear before the District and Sessions Judge (North-West District), Rohini Courts, Delhi on 6th June, 2017 and the District and Sessions Judge will mark the case seeking letters of administration for disposal to a competent Court in accordance with law.

6. The appeal is accordingly allowed and disposed of.

MAY 19, 2017/

VALMIKI J. MEHTA, J