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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M)No.474/2017, CM No.16191/2017 (for stay) & CM
No.28124/2017 (of the petitioner under Section 151 CPC).
VINAY KUMAR Petitioner

Through: Mr. Santosh Kumar, Mr. Rajiv R.
Mishra and Ms. Shruti Sharma, Advs.

versus

BIJAY KUMAR Respondent

Through: Mr. Puneet Agrawal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.08.2017**

1. This petition under Article 227 of the Constitution of India impugns the order (dated 20th April, 2017 in Probate Case No.42315/16 of the Court of Additional District Judge-06 (Central), Delhi) of dismissing the application of the petitioner / objector no.3 for comparison of the signatures of the testatrix on the document of which probate is sought with an authorisation letter stated to have been submitted by the deceased to the Housing Society.
2. The petition came up before this Court on 28th May, 2017 when notice thereof was ordered to be issued for 21st July, 2017. Though the petition was accompanied with an application for interim relief for stay of proceedings in the Probate Case but no such interim relief was granted.
3. On 21st July, 2017 though the respondent had been served but the petition could not be taken up for hearing owing to paucity of time and adjourned to 14th November, 2017.
4. CM No.28124/2017 has been filed by the petitioner / objector no.3 stating (i) that the Probate Case, after 20th April, 2017, was listed before the

Probate Court on 29th April, 2017 when the Probate Court was informed of this petition having been filed and adjournment was sought and the matter adjourned to 22nd July, 2017; (ii) that on 22nd July, 2017, the petitioner / objector no.3 again moved an application before the Probate Court seeking adjournment to a date after 14th November, 2017, again owing to pendency of this petition; and, (iii) that the Probate Court did not accede to the request of the petitioner / objector no.3 and has adjourned the matter to 10th August, 2017. Thus, in CM No.28124/2017, the relief of taking up application for interim relief immediately has been claimed.

5. I have already in order dated 26th July, 2017 in CM(M) No.629/2017 titled ***Ramakant Kaushik Vs. Pawan Sharma*** held that the conduct of the litigants / their counsels of seeking adjournment before the Trial Court on the ground of pendency of Revision Petition / petition under Article 227 of the Constitution of India before this Court, without this Court having stayed proceeding before the Trial Court, is contumacious and amounts to abuse of the process of the Court.

6. The counsel for the petitioner / objector no.3 herein also states that the petitioner on 28th April, 2017 had pressed his application for interim relief of stay of proceedings in the Probate Case but which was not granted. If that be so, the counsel ought to have known that this Court did not intend that the proceedings before the Probate Court in the Probate Case from which this petition arises should be stayed pending the decision of this petition and should continue. Notwithstanding the same, the counsel misrepresented before the Trial Court by seeking adjournment on the basis of pendency of this petition. It is for this reason that the said conduct is contumacious. This petition is thus liable to be dismissed on this ground only.

7. Be that as it may, the merits have also been considered.
8. The learned Additional District Judge, in the impugned order, has reasoned (i) that the issues were framed in the Probate Case on 2nd April, 2009; (ii) that the propounder of the Will closed evidence after examining himself and attesting witnesses; (iii) that the petitioner / objector no.3 examined himself as RW-1 and six other witnesses; (iv) that the original of the authorisation letter with which the signatures of the deceased on the document claimed to be the Will were sought to be compared had not been placed on record and only photocopy had been placed on record; (v) that the petitioner / objector no.3 wanted signatures to be compared only with the said authorisation letter and not with other admitted signatures on record; (vi) that though the petitioner / objector no.3 had earlier sought to summon witnesses from the Housing Society but the same was declined on 16th January, 2017 and whereafter the application, against the dismissal whereof this petition has been preferred, was filed on 7th March, 2017; and, (vii) that the petitioner / objector no.3 had withdrawn a similar application on 28th April, 2012.
9. The propounder of the Will, in his reply to the application, also mentioned the order dated 30th September, 2016 of this Court in CM(M) No.991/2016 arising from the aforesaid Probate Case wherein finding that the Probate Case was pending since the year 2002, the Probate Court was directed to dispose of the matter within six months from 30th September, 2016 i.e. by 31st March, 2017.
10. The said time is also over but the Probate Case is still pending.
11. The petitioner, nowhere in this petition has mentioned the order dated 30th September, 2016 and has not filed any copy thereof also with the

petition. It is doubtful that had this Court on 28th April, 2017 been apprised of the order dated 30th September, 2016, notice even of the petition would have been issued. The conduct of the petitioner / objector no.3 of concealing the order dated 30th September, 2016 from this Court also amounts to abuse of process of the Court.

12. On enquiry, it is informed that the subject matter of the document claimed to be the Will and of which probate is sought, is a flat in a Group Housing Society and which is in possession of the petitioner / objector no.3. It appears that the dilatory tactics of the petitioner / objector no.3 are in an attempt to perpetuate possession, which the petitioner / objector no.3 would not be entitled to retain once probate is granted.

13. The Probate Court, vide Sections 247, 253, 268 and 269 of the Indian Succession Act, 1925, is entitled to pass appropriate orders for preservation of the estate of the deceased.

14. It has been enquired from the counsel for the petitioner / objector no.3 as to how much is the letting value of the flat, so that the petitioner / objector no.3 can be made to deposit the same in the Court subject to the final outcome of the probate case.

15. The counsel for the petitioner / objector no.3 at this stage states that the petitioner / objector no.3 is an advocate and final arguments in the probate case have already started and the petitioner / objector no.3 will expeditiously conclude the same.

16. The counsel for the respondent states that the respondent has already concluded his arguments and the matter is listed next before the Trial Court on 10th August, 2017 for arguments of the petitioner / objector no.3.

17. The counsel for the petitioner / objector no.3 is bound down to his

statement aforesaid and to conclude his arguments on the said date and the learned Additional District Judge is requested to in the spirit of the order dated 30th September, 2016, dispose of the probate case at the earliest.

18. In view of the aforesaid stand of the petitioner / objector no.3, I am at this stage refraining from issuing any direction for deposit of use and occupation charges of the flat.

19. The petition is dismissed.

20. The counsel for the petitioner / objector no.3 seeks clarification that the observations hereinabove will have no bearing on the final decision of the probate case.

21. Subject to the condition that the petitioner / objector no.3 now does not abuse the process of the Court and does not anymore indulge in any dilatory tactics, it is clarified so.

22. The date of 14th November, 2017 stands cancelled.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 08, 2017

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