

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

BIRHAM DATT YADAV Appellant
Through : Mr. Abhinav Tathagat, Adv.

STATE AND ORS Respondents
Through : Mr. M.M. Singh, Adv. for
R-2.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE P.S. TEJI

% **18.08.2017**

1. Heard.
2. The present appeal raises a challenge to the order dated 20th April, 2017 passed in ***Test.Cas.No.33/2014 Birham Datt Yadav. Vs. State & Ors.***, whereby the appellant's right to file reply to the objections filed by respondent no.2 has been closed.
3. Mr. M.M. Singh, ld. counsel for the respondent no.2 contends that the appellant and respondent nos.2 to 4 are the heirs of late Shri Ram Rikh, who had entered into family settlement more than 20 years ago. It is submitted that the probate petition has been filed by the appellant herein setting out an alleged Will dated 13th October, 1992 after the family settlement was fully implemented. The appellant is allegedly contesting the validity of the settlement.

4. Ld. counsel for the respondent no.2 vehemently contends that, as a result, rights of all the family members would be disturbed inasmuch as the family settlement was acted upon and that the proceedings by way of probate case are dishonest.

5. It is further contended that it was for this reason that the appellant has failed to file reply to the objections filed by the respondent no.2 despite being granted time to that effect on 9th March, 2016 ; 3rd August, 2016 and 16th November, 2016 and even last opportunity, ld. counsel for respondent no.2 would contend that under these circumstances, ld Single Judge rightly passed the impugned order dated 20th April, 2017 closing the appellant's right to file the reply to the objection.

6. *Prima facie* there appears to be substance in the objection of ld. counsel for the respondent. However, it cannot be disputed and denied that even though the right to file the reply to the objections has been closed, the appellant's right to lead evidence to prove his Will is maintained. Respondent no.2 also, has still to prove his objections in accordance with law.

Therefore, in order to obviate any further delay and for the reasons of expediency, we are inclined to grant last opportunity to the appellant to file reply to the objections, subject to payment of costs to meet the ends of justice.

7. In view thereof, we direct as follows:-

(i) subject to the appellant paying cost of Rs.21,000/- to the respondent no.2 within one week from today and filing the reply to

the objections within 10 days from today, accompanied by proof of payment of costs to the respondent no.2, the reply of the appellant to the objections would be taken on record.

(ii) The impugned order dated 20th April, 2017 shall stand modified by the order which we have passed today.

This appeal is disposed of in the above terms.

CM No.17025/2017 (Stay)

In view of the order passed in the appeal, this application does not survive for adjudication and is rendered infructuous.

The application is disposed of.

Dasti to parties.

ACTING CHIEF JUSTICE

P.S. TEJI, J

AUGUST 18, 2017

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