

\$~9

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

+ CM(M) 644/2017

INDER PAL SINGH

..... Petitioner

Through: Mr.K.N.Bhargavan and Mr.Saurabh
Bhargavan, Advocates.

versus

STATE & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

31.05.2017

CM(M) 644/2017

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 4th January, 2017 passed in P.C.No.40/2012 whereby the learned Probate Court has not given the opportunity to the petitioner to cross examine OW-4 Ms.Paramjeet Kaur.

2. The impugned order dated 4th January, 2017 reads as under:-

'04.01.2017

*Present : Sh.Saurabh Bhargava, counsel for the petitioner.
Sh.Vikrant R.Sharma, counsel for respondent No.2.
Sh.Avdhesh proxy counsel for Sh.K.V.Gopi,
counsel for the respondent Nos.3 to 6.*

*Fresh vakalatnama has been filed on behalf of
respondent no.2. Same is kept on record.*

Cost of ₹3,000/- paid to respondent No.2.

OW-4 Ms.Paramjeet Kaur has been examined, cross-examined by counsel for respondent No.2 and discharged. As per her statement, the evidence of respondents No.3, 4, 5 and 6 stands closed.

Learned counsel for respondent No.2 wants to cross-examine the witness. Since OW-4 is supporting the petitioner, therefore, it would be of pre-judicial to the respondent No.2 and petitioner has already lead the evidence in which respondent No.3 to 6 supported the petitioner. Hence, in these circumstances opportunity cannot be granted to petitioner advercial to respondent No.3.

Now to come up for final arguments on 10.04.2017.'

3. Learned counsel for the petitioner submits that though OW-4 Ms.Paramjeet Kaur, who is sister of the parties, is supporting the petitioner herein (respondent No.2 before the Probate Court) but he wanted to cross examine her as she was with the father of the parties during his last days. Learned counsel for the petitioner does not dispute that whatever OW-4 Ms.Paramjeet Kaur wanted to depose in respect of the Will for which probate has been applied, she has deposed during her examination-in-chief.

4. The reason given by the learned Probate Court for not giving the opportunity to the petitioner/respondent No.2 to cross examine OW-4 is that they are supporting each other.

5. Proceeding under Article 227 of The Constitution of India is an extraordinary discretionary constitutional remedy to advance justice and not to thwart it. In the case ***Jai Singh & Ors.. vs. Municipal Corporation of Delhi & Anr. 2011 (1) RCJ 343 (SC)***, the Apex Court has considered the scope of power of High Court under Article 227 of The Constitution of

India. The relevant paragraph of the report is extracted as under :

*‘25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of **The Estralla Rubber v. Dass Estate (P) Ltd., 2001 8 SCC 97, wherein it was observed as follows :***

“The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limited of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to”.’

6. Admittedly OW-4 Ms.Paramjeet Kaur – sister of the parties is not having any adversarial interest qua petitioner, hence there was hardly any necessity to test the creditworthiness of her testimony by way of cross examination.

7. The impugned order does not suffer from any illegality or infirmity so as to warrant interference by this Court in exercise of extraordinary

jurisdiction vested under Article 227 of the Constitution of India.

8. The petition is dismissed.

CM No.21771/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 31, 2017

'st'