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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1253/2016, CM No.44976/2016 (for stay) & CM
No.44979/2016 (for condonation of 53 days delay in refilling the
petition)

VIJAY ARORA

..... Petitioner

Through: Mr. Nikhil Malhotra, Adv.

Versus

ASHISH SAHNI

..... Respondent

Through: Mr. Jagdeep Kishore & Ms. Rekha
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.07.2017

1. This petition under Article 227 of the Constitution of India was preferred impugning the order (dated 30th July, 2016 in Civil Suit No.10661/2016 of the Court of Additional District Judge (ADJ), West District, Tis Hazari Courts, Delhi) of dismissal of the applications filed by the petitioner / plaintiff under Order VI Rule 17 and Order I Rule 10 of the CPC.
2. The petition was entertained and notice thereof issued.
3. The counsel for the respondent appeared and vide order dated 27th March, 2017, the parties were referred to the Mediation Cell of this Court.
4. Mediation has been successful with the efforts of Sh. H.K. Chaturvedi, Advocate / Mediator and a Settlement Agreement dated 14th July, 2017 purporting to be signed by the parties, their advocates and the mediator has been received.
5. The counsels for the parties support the Settlement Agreement.

6. A perusal of the Settlement Agreement shows that the compromise arrived at between the parties, besides in the suit from which this petition arises, is also in Test Case No.16/2012 of this Court filed by the respondent Ashish Sahni along with his wife seeking probate of a document dated 31st March, 2005 claimed to be the validly executed last Will of Sh. Suraj Prakash Sahni, and to which the petitioner Smt. Vijay Arora has filed objections and which test case is pending consideration.

7. As per settlement arrived at between the parties, the petitioner is *inter alia* withdrawing her objections in the aforesaid Test Case and accepting the aforesaid document to be the validly executed last Will of Sh. Suraj Prakash Sahni.

8. I have enquired from the counsels as to how there can be a grant of probate by consent.

9. The counsels state that it is only the petitioner Smt. Vijay Arora who has filed objections in the Test Case and once Smt. Vijay Arora has withdrawn her objections and this Court binds the parties by the Settlement Agreement, the need to obtain probate would not arise.

10. Subject to the aforesaid, compromise arrived at between the parties and as recorded in the Settlement Agreement is found to be lawful and is allowed.

11. The suit from which this petition arises is dismissed as withdrawn and a formal order in that regard shall be made by the Court before which it is pending.

12. The objections filed by the petitioner Smt. Vijay Arora in Test Case are dismissed as withdrawn.

13. With the dismissal of the suit from which this petition arises, this petition has become infructuous and is dismissed.

14. However the parties are ordered to be bound by the Settlement Agreement.

15. The counsel for the respondent has in Court handed over cheques in terms of Settlement Agreement in favour of the petitioner present in Court to the counsel for the petitioner and which have been accepted by the petitioner. A photocopy of the said cheques is handed over and is taken on record.

16. Needless to state that in terms of the Settlement Agreement, the petitioner shall also withdraw the complaint referred in Clause 'C' of the Settlement Agreement.

17. Parties undertake to this Court to be bound by the terms of the Settlement Agreement.

18. It is further made clear that neither party shall make any claim in contravention of the Settlement Agreement.

19. The counsel for the petitioner is at liberty to make a request to the ADJ for refund of the court fees paid on the suit.

RAJIV SAHAI ENDLAW, J

JULY 24, 2017

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