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

+ CM(M) 251/2017 and CM Nos. 8363-65/2017

ANIL KUMAR Petitioner
Through Mr.P.K.Rawal and Mr. Tarun
Aggarwal, Advocates.

versus

SUNIL KUMAR & ORS Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **01.03.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 15.09.2016 by which the right of the petitioner to cross-examine PW-1 was closed
2. Respondent No.1 has filed the present petition under Section 278 read with Section 232 of the Indian Succession Act for grant of letter of administration of the last and final Will dated 11.07.2011 of Late Smt.Sarla Devi, the mother of the petitioner and respondent No.2.
3. By the impugned order the trial court noted that on the last date of hearing, counsel for the petitioner had said that he was not prepared for the cross-examination. The trial court noted that now, after a lapse of two months, he is in the same status and closed the right of the petitioner to cross-examine PW-1.

4. I have heard learned counsel for the petitioner.
5. An advance copy of the petition has been sent to the respondent but none is present.
6. Learned counsel for the petitioner points out that prior to the date of the impugned order i.e. 08.09.2016, the court had referred the parties to mediation to appear before the concerned mediation centre. He submits that on 15.09.2016 when the impugned order was passed closing the rights of the petitioner to cross-examine PW-1, the parties were still before the mediator. He points out that mediation has come to an end as reflected in order dated 24.11.2016.
7. Normally, when parties are referred to mediation, it is appropriate for the civil court to hold back further proceedings to enable the parties to try and settle the matter amicably. It would be difficult for the parties to continue on the one hand mediation proceedings and on the other hand contest the matter in court.
8. In view of the above, the impugned order suffers from material irregularity. The same is quashed. The petitioner shall have a right to cross-examine PW-1 on the date to be fixed by the trial court. The petitioner on the said date shall not take any adjournment.
9. In view of the above, the present petition and all pending applications stand disposed of.
10. Copy of the order be given Dasti under the signatures of the Court Master.

JAYANT NATH, J

MARCH 01, 2017/rb