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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 711/2017 & CM No.24723/2017 (for stay)
JAGMOHAN TANEJA Petitioner
Through: Mr. Ayushya Kuhar, Adv.
Versus

STATE & ORS Respondents
Through: Mr. Rajat Malhotra & Mr. Sunil
Malhotra, Advs. for R-1.
Mr. Jasbir Bidhuri, Adv. for R-2.
Mr. Aseem Mehrotra, Adv. for R-3&4.
Mr. Arun Arora, Adv. for R-5,7,9&11.
Mr. Suman Kapoor, Adv. for R-6&8.

AND

CM(M) 824/2017 & CM No.27587/2017 (for stay)
JAGMOHAN TANEJA Petitioner
Through: Mr. Ayushya Kuhar, Adv.
Versus

STATE & ORS Respondents
Through: Mr. Aseem Mehrotra, Adv. for R-3&4.
Mr. Jasbir Bidhuri, Adv. for R-4.
Mr. Arun Arora, Adv. for R-5,7,9(a)
& 9(c).
Mr. Suman Kapoor, Adv. for R-6&8.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.08.2017**

1. This order is in continuation of the order dated 17th July, 2017 in CM(M) No.711/2017 and in pursuance whereof CM(M) No.824/2017 has been filed.
2. The counsel for the petitioner Jagmohan Taneja, the counsel for the respondent no.3 Guresh Kumar Taneja and respondent no.4 Anil Kumar Taneja and the counsels for the sisters have been heard.

3. The counsel for the petitioner Jagmohan Taneja who is contesting the Will set up by respondent no.3 Guresh Kumar Taneja has argued that the petitioner Jagmohan Taneja is seeking an opportunity to cross-examine Rajender Kumar Sharma being the witness to the Will propounded by respondent no.3 Guresh Kumar Taneja and to lead his own evidence.

4. It is argued that Rajender Kumar Sharma aforesaid was examined and cross-examined on 19th August, 2016 and since the petitioner Jagmohan Taneja was at that time not appearing in the proceedings, the evidence in the probate cases was held to be concluded and the matters posted for final arguments. It is further contended that after the respondents no.3&4 Guresh Kumar Taneja and Anil Kumar Taneja closed their evidence on 19th August, 2016, no opportunity was given to the petitioner Jagmohan Taneja to lead his evidence.

5. The counsel for the petitioner Jagmohan Taneja has been unable to justify the non cross-examination by the petitioner Jagmohan Taneja of Rajender Kumar Sharma aforesaid at the time when Rajender Kumar Sharma was examined as a witness. Rajender Kumar Sharma being a witness to a document of which probate as a Will is sought, the chronology of cross-examination is very important and the petitioner Jagmohan Taneja, after remaining absent at the time when the said witness was to be cross-examined, cannot as an afterthought seek a right to cross-examine. It is significant that most of the time, when both the attesting witnesses to a document claimed to be a Will are intended to be examined, an endeavour is made to have the examination and cross-examination conducted on the same day as postponing the cross-examination often results in affecting the evidence.

6. The counsel for respondent no.3 Guresh Kumar Taneja has in Court handed over the complete ordersheet of the probate case from the time when issues were framed and has from order dated 23rd October, 2007 demonstrated that the petitioner Jagmohan Taneja was proceeded against *ex parte* and on enquiry states that the said order proceeding *ex parte* against the petitioner Jagmohan Taneja was never set aside as no application therefor was made.

7. The counsel for the petitioner Jagmohan Taneja has not controverted the aforesaid.

8. The petitioner Jagmohan Taneja having been proceeded *ex parte* nearly nine years prior to 19th August, 2016 could not have sought the right to cross-examine Rajender Kumar Sharma or to examine his own witnesses. If the petitioner Jagmohan Taneja had not been appearing at the relevant time, it is well neigh possible that the evidence if any of the petitioner Jagmohan Taneja would have been recorded prior to the commencement of recording of evidence of the witnesses of respondent no.3 Guresh Kumar Taneja. I have already in the order dated 17th July, 2017 observed that the petitioner Jagmohan Taneja appears to be in collusion with Gurcharan Lal Taneja and the application against the dismissal whereof these petitions have been filed appears to have been also made to fill up the lacunae / deficiencies realized after assessing the entire evidence at the stage of final arguments and which cannot be permitted.

9. As far as the question of the petitioner Jagmohan Taneja being entitled to lead his own evidence, admittedly the petitioner Jagmohan Taneja

is not an attesting witness to either of the documents of which probate as Will is sought and is thus incompetent to prove the Will.

10. I have enquired from the counsel for the petitioner Jagmohan Taneja whether it is the case of the petitioner Jagmohan Taneja that the deceased at the time of execution of the document claimed to be the Will by respondent no.3 Guresh Kumar Taneja, was not of sound mind.

11. The counsel for the petitioner Jagmohan Taneja states that the deceased was of sound mind.

12. The counsel for the petitioner Jagmohan Taneja however states that the petitioner Jagmohan Taneja, in his evidence, wants to prove that the contents of the document claimed to be the Will by respondent no.3 Guresh Kumar Taneja are incorrect.

13. However the counsel for the petitioner Jagmohan Taneja on being asked to show the issues in the probate case filed by respondent no.3 Guresh Kumar Taneja, has drawn attention to page 92 of CM(M) No.824/2017 and which shows the petitioner Jagmohan Taneja to have not sought framing of any issue on any such plea. The only issue framed in the said probate case is found to be qua the valid execution of the document claimed to be the Will by respondent no.3 Guresh Kumar Taneja.

14. The purpose of framing issues is to guide the trial and no trial outside the issues is to be permitted as the same would otherwise defeat the purpose of framing of the issues.

15. The counsel for the petitioner Jagmohan Taneja is unable to justify any issue on which the petitioner Jagmohan Taneja is required to lead evidence.

16. The counsel for the petitioner Jagmohan Taneja at this stage has argued that it was the plea of respondent no.3 Guresh Kumar Taneja that the document claimed to be the Will by him was at the behest of respondent no.9C Smt. Ravi Kanta and who had at the contemporaneous time supported respondent no.3 Guresh Kumar Taneja but has subsequently withdrawn her reply / written statement supporting respondent no.3 Guresh Kumar Taneja. It is stated that the petitioner Jagmohan Taneja wants to examine the said Smt. Ravi Kanta.

17. Respondent no.9C Smt. Ravi Kanta being a party to the proceedings, if desires to appear as a witness, could have sought an opportunity to appear as a witness and the petitioner Jagmohan Taneja cannot be permitted to summon her as a witness. Moreover, what is on the record of the probate case can be always read at the time of final arguments if permitted in law.

18. There is no merit in the petitions.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 22, 2017

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