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

+ **FAO 431/2017**

PITTI GARYALI

..... Appellant

Through: Mr. A.B. Pandey, Ms. Shruti Sharma,
Mr. Sonu Sagar, Ms. Ruchika Singh
and Mr. Dinesh Monga, Advocates.

versus

THE STATE & ORS

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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08.11.2017

C.M. Appl. No. 40078/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

FAO 431/2017 and C.M. Appl. Nos. 40077/2017, 40079-80/2017

1. This appeal is filed under Section 299 of the Indian Succession Act, 1925, impugning the judgment of the probate court below dated 31.5.2017 by which the probate petition filed by the appellant/petitioner was dismissed. It is seen that probate petition

has been dismissed essentially because evidence of the appellant was closed after she stepped into the witness box, i.e., the appellant did not lead evidence of the attesting witness to the subject Will dated 19.10.2008 executed by Sh. Brij Mohan Garyali. It is also noted that the petition has also been dismissed on account of respondent no. 3, one son of late Sh. Brij Mohan Garyali not being served.

2. It is seen that there were a total of four respondents in the probate petition. The private respondents were respondent nos. 2 to 4 being the two sons and one daughter of late Sh. Brij Mohan Garyali. One son being respondent no. 2 and the daughter/respondent no. 4 gave their no objections to allowing of the probate petition. Respondent no. 3, however, could not be served as the Court below did not give opportunity to the appellant to serve respondent no. 3 by way of publication.

3. It is noted that the trial court has been unnecessarily harsh upon the appellant/petitioner in closing her right to lead evidence because effectively appellant/petitioner had one opportunity or at best two opportunities to lead evidence.

4. In view of the aforesaid, this appeal is allowed and the

impugned judgment of the probate court below dated 31.5.2017 is set aside and it is directed that the probate court below will now give opportunity to the appellant/petitioner to serve respondent no. 3 by way of publication and appellant will also lead evidence of the attesting witness of the Will dated 19.10.2008. Appellant is however directed not to take unnecessary adjournments in the matter.

5. The present appeal is accordingly allowed and disposed of in terms of the aforesaid observations.

6. Since the main appeal stands disposed of, all the pending applications also stand disposed of.

7. Parties to appear before the District and Sessions Judge, North-WEST, Rohini Courts, Delhi, on 4th December, 2017 and the District and Sessions Judge will now mark the probate petition for disposal to a competent court in accordance with law.

VALMIKI J. MEHTA, J

NOVEMBER 08, 2017

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