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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1180/2017 & CM No.38232/2017 (for stay).
GURCHARAN LAL TANEJA Petitioner
Through: Ms. Ekta Sikri and Mr. Jasbir Bidhuri,
Advts.
versus
STATE GOVT OF NCT OF DELHI & ORS Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.10.2017

CM No.38233/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) 1180/2017 & CM No.38232/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns,
i) the order (dated 15th February, 2017 in PC No.42274/16 of the Court of Additional District Judge (ADJ)(Central), Tis Hazari Courts, Delhi) closing the right of the petitioner / respondent no.2 in the Probate Case for examining Ms. Sudarshan Rani as his witness and posting the Probate Case for final arguments on 28th February, 2017; and, ii) the order dated 14th October, 2017 in the same proceeding dismissing the application filed by the petitioner / respondent no.2 for review of the order dated 15th February, 2017 and again posting the Probate Case for final arguments on 27th October, 2017 i.e. tomorrow.
4. The learned ADJ, in the impugned order dated 15th February, 2017, has recorded i) that the matter was kept awaited since morning for presence

of the witness Ms. Sudarshan Rani in terms of order dated 10th February, 2017; ii) that it was a special opportunity granted in the interest of justice to the petitioner / respondent no.2 but the petitioner / respondent no.2 had not availed of the same by simply stating that there is a marriage in the house of the petitioner / respondent no.2 and “therefore no steps could be taken for the witness”; iii) that however in the order dated 10th February, 2017, it was recorded that the said witness Ms. Sudarshan Rani had on an earlier occasion appeared, without being summoned, to depose as a witness along with the petitioner / respondent no.2, indicating that she was well within the control of the petitioner / respondent no.2; iv) that if on 15th February, 2017 she was required to be summoned, steps therefor ought to have been taken; v) that the Probate Case was more than 10 years old; vi) that the opportunity given to the petitioner / respondent no.2 to examine the said witness Ms. Sudarshan Rani was a special opportunity but had not been availed of and hence the right of petitioner/respondent No.2 to examine said Mrs. Sudarshan Rani was being closed. After ordering so, the Probate Case was adjourned to 28th February, 2017 for final arguments.

5. The learned ADJ in the impugned order dated 14th October, 2017 has reasoned i) that the Probate Case was 12 years old and after it had reached the stage of final arguments, one application after another was pouring in delaying the final arguments; ii) that the petitioner / respondent no.2 wanted to be heard in person on the Review application though otherwise he was continuing with his counsel; iii) that the contents of the application for review violated all settled legal principles regarding the scope of review;

and, iv) that the filing of the application for review was in abuse of the process of law.

6. The impugned order dated 14th October, 2017 refers to the order dated 17th July, 2017 in CM (M) No.711/2017 and order dated 22nd August, 2017 in CM(M) No. 711/2017 and CM(M) No.824/2017 arising from the same Probate Case. However the petitioner has not filed copies of the same along with this petition. The counsel for the petitioner upon asking, has handed over copies of the said orders dated 17th July, 2017 and 22nd August, 2017.

7. CM(M) No.711/2017 and CM (M) No.824/2017 were preferred by Jagmohan Taneja / respondent no.3 in the Probate Case. The orders dated 17th July, 2017 and 22nd August, 2017 record i) that the said Jagmohan Taneja was supporting the petitioner herein; and, ii) that CM(M) No.711/2017 and CM(M) No.824/2017 filed by Jagmohan Taneja were in support of the petitioner herein.

8. The order dated 10th February, 2017 supra on the application of the petitioner/respondent No.2 under Order XVIII Rule 17 of the CPC records i) that the trial in the Probate Case stood concluded on 19th August, 2016 and the Probate Case was listed for final arguments for 17th September, 2016; ii) that the witness Ms. Sudarshan Rani was also a party to the Probate Case and though had earlier filed objections in the Probate Case filed by the petitioner herein and which is consolidated with the Probate Case from which this petition arises but had subsequently withdrawn the same showing that the said Ms. Sudarshan Rani was supporting the petitioner; iii) that the said witness Ms. Sudarshan Rani had filed her 'No Objection' in the Probate Case filed by Guresh Kumar Taneja and Anil Kumar Taneja

(respondents no.2&3 to this petition) and from which this petition arises but had claimed that the said 'No Objection' was filed under pressure from the said Guresh Kumar Taneja and Anil Kumar Taneja; iv) that the witness Ms. Sudarshan Rani had already been denied permission to lead evidence on her own behalf in the Probate Case on the ground that she had not filed any objections in the Probate Case filed by Guresh Kumar Taneja and Anil Kumar Taneja from which this petition arises; v) that the witness Ms. Sudarshan Rani was taking wavering stand from time to time, filing objections, 'No Objections' and thereafter withdrawing and resiling from the same; vi) that however since the petitioner herein, notwithstanding the same, wanted to examine the said Ms. Sudarshan Rani as his witness, opportunity was being granted to the petitioner therefor on the condition of payment of costs and on further condition that the petitioner herein will examine the said Ms. Sudarshan Rani on a limited aspect so as to identify the signatures of her deceased husband Harbans Lal Kochar.

9. In view of what transpired during the hearing, the counsel for the petitioner was asked to submit a one page synopsis in bullet points of her arguments so that the same can be reproduced verbatim in this order. The counsel for the petitioner, instead of giving a one page synopsis, has handed over written submissions running into as many as three pages and the same are reproduced hereinbelow:

- “1. The Petitioner impugned two order(s) dated 15.02.2017 and 14.10.2017 in the instant petition, whereby, vide order dated 15.02.2017 the opportunity of the Petitioner/ Respondent No. 2 to

examine the Respondent No. 5- Smt. Sudershan Rani was closed, which was granted previously by order dated 10.02.2017, as the Petitioner as well as Respondent No. 5- Smt. Sudershan Rani (Witness) were not present.

2. A Review application was filed by the Petitioner for seeking review of aforesaid order dated 15.02.2017 which was also dismissed by the Ld. Trial Court vide order dated 14.10.2017.
3. That it is submitted, the evidence of the Respondent No. 5- Smt. Sudershan Rani was declined by the Ld. Trial court vide order dated 19.08.2016 and thereafter, the Petitioner sought to examine her (i.e. Respondent No. 5- Smt. Sudershan Rani) as his witness in evidence in rebuttal to dispute the signature of her deceased husband Late Sh. H. L. Kochar who was allegedly one of the attesting Witness of the alleged Will dated 23.05.1997. It may be noted that the Petitioner didn't get an opportunity to lead his evidence in the Second Probate Case i.e. P. C. No. 42274 of 2016, since the two probate cases were consolidated for the purpose of trial vide order dated 31.08.2007.
4. It is further submitted that taking into consideration the aforesaid factors and noting in Para No. 25 of the order dated 10.02.2017 wherein Ld. Trial Court observed that *"In spite of all this, If Respondent No. 2 still feels that, the said Witness has some credibility and can come and prove certain point, which is absolutely quite crucial i.e. signature of sh. Harbans Lal Kochar in the given circumstances, she would be appearing only in the capacity of a witness, and on a limited point, and on no other aspect of the case or cross case, whatsoever"*

Thus, vide the aforestated order, the Ld. Trial Court granted permission to the Petitioner to lead evidence in rebuttal and produce, the Respondent No. 5- Smt. Sudershan Rani as a witness only for the limited purpose to disputing the signature of Late Sh. Harbans Lal Kochar. It is pertinent to note that the Ld. Trial Court had reserved the order on the said application seeking rebuttal evidence and the order dated 10.02.2017 was pronounced when 'None' of the parties was present and a date of 15.02.2017 was fixed by the Ld. Trial Court for leading evidence in rebuttal.

5. It is submitted that on 14/15.02.2017, the Petitioner's daughter and niece of the Respondent no. 5- Smt. Sudershan Rani (Witness) was getting married, due to which Petitioner and the witness couldn't attend the court hearing and request in this regard was also made by the Counsel of the Petitioner on 15.02.2017. However, the Ld. Trial Court closed the opportunity for R.E. which was given to Petitioner on 10.02.2017.
6. That thereafter, immediately on 23.02.2017, the Petitioner filed a Review application, duly annexing the wedding card of his daughter and stating the reason of his absence. However, the Ld. Trial Court dismissed the same on 14.10.2017 without dealing with any of the submission made by the Petitioner in his Review Application.
7. That it is humbly submitted that the absence of the Petitioner and the Witness on 15.02.2017 was compelled by the reason as aforestated and as such the Petitioner seeks one last opportunity to examine the Witness i.e. Respondent no. 5- Smt. Sudershan Rani, as a witness in rebuttal and for the purpose of disputing the signature of deceased husband as attesting witness in the alleged Will dated 23.05.1997.

8. That it is also submitted, as was requested to this Hon'ble Court, that the Petitioner is even willing to produce the Witness namely, Smt. Sudershan Rani- Respondent No. 5, tomorrow itself i.e. 27.10.2017, when the matter is listed for Final Arguments before the Ld. Trial Court, and it is further submitted that the Petitioner is willing to address the Final Arguments immediately after the examination is concluded i.e. on 27.07.2017 itself.
9. It is further submitted that this Hon'ble Court, on a previous occasion, i.e. on 22.08.2017 in CM (M) 711/2017 & CM (M) 824/2017 filed by the brother of the Petitioner i.e. Jagmohan Taneja was pleased to dismiss the same, as such the Ld. Trial Court has referred to and even relied on the said order, in the impugned order dated 14.10.2017.
10. That on a Court Query, enquiring about the filling of the said order, it was submitted that there was no concealment or suppression of the same, and as such the same finds mention in the impugned order and in fact has even been relied upon by the Ld. Trial Court. It was further submitted that the dismissal of the said CM (M) will not have a bearing on the present matter, in as much as, the same was dismissed on the premise that the Petitioner- Jagmohan Taneja in that Petition was proceeded ex-parte and appeared before the Court after a long period of 9 years and even otherwise the ex-parte order was not set- aside by the Ld. Trial Court. This, Hon'ble High Court, thus upheld the order of Ld. Trial Court, dismissing the application of Sh. Jagmohan Taneja to lead further evidence by way of previous CM (M) in its order dated 22.08.2017 in the aforementioned CM (M). However, the same will not apply or have a bearing on the present matter, wherein the Petitioner- Sh. Gurcharan Lal Taneja,

has been vigilant all along, and as such after due consideration of all the factors and appreciating the relevance of the evidence and witness sought to be produced by the Petitioner, the Ld. Trial Court was pleased to grant permission, which was not the case in earlier Petition i.e. CM (M) 711/2017 & CM (M) 824/2017 filed by the brother of the Petitioner i.e. Jagmohan Taneja and thus the same being not relevant for the present controversy, was not filed in the present proceedings.

In view of the aforestated submissions, it is humbly submitted that, great prejudice would be caused to the Petitioner, if one more opportunity is not granted to call the witness – Respondent No. 5 to examine as witness in rebuttal.”

10. The National Court Management Systems Committee of the Supreme Court aims at disposal of all more than 10 years old cases before the end of this year. The said process is being monitored by the State Court Management Systems Committees of the different High Courts and the said Committee of this Court has been holding regular meetings to monitor achieving the said target and has been exhorting the Judges of the District Courts to not grant unnecessary and repeated adjournments. I have already in order dated 17th August, 2017 in CM(M) No. 625/2017 titled ***Pawan Kataria Vs. Ardeep Kumar Batta***, in order dated 28th August, 2017 in CM(M) No. 927/2017 titled ***Prem Lata Vs. Kuwar Pal*** and in order dated 8th September, 2017 in CM(M) No. 979/2017 titled ***Madan Gopal Singh Vs. Mahinder Kaur*** held that this Court cannot, acting administratively and acting judicially, send contradictory signals to the District Courts and

interference with the orders of the District Court in compliance of the administrative directions should only be where it is felt that fair opportunity of being heard has been denied. However, under the garb of fair opportunity of hearing, unlimited adjournments cannot be granted. Allowing so would amount to acting unfairly and unjustly to the opposite parties.

11. In the present case, the Probate Case from which this petition arises, ripened for final arguments more than one year ago. The learned ADJ in detailed impugned orders, particularly in the order dated 14th October, 2017, has recorded particulars of repeated applications being filed since then and owing whereto the final arguments have not been heard for over one year. Certainly, in the present case, it cannot be said that the petitioner has been denied fair hearing opportunity.

12. Merely because the learned ADJ vide order dated 10th February, 2017, notwithstanding the right of the petitioner to lead evidence having stood closed, granted opportunity to the petitioner to examine Ms. Sudarshan Rani did not vest any right in the petitioner to again start the process of seeking adjournment after adjournment and in the process allow another decade to pass before the Probate Case is decided.

13. I have enquired from the counsel for the petitioner about the order of the date when arguments on the application of the petitioner under Order XVIII Rule 17 CPC were heard and reserving the orders thereon. Neither has the said order been filed nor is the same today available with the counsel for the petitioner. From my experience of the days of practice in the

therefor is given. Thus the petitioner must have known that the application had been allowed on 10th February, 2017. If the petitioner chose not to learn about the order dated 10th February, 2017, the petitioner herein has himself to blame and cannot cause prejudice to the opposite parties in the Probate Case by his own default.

14. The petitioner, after 10th February, 2017, did not inform the Probate Court / ADJ that for the reason of marriage, the date of 15th February, 2017 was not convenient. On the contrary, the petitioner took it for granted that the Court, on 15th February, 2017, would adjourn the matter merely on asking.

15. On 15th February, 2017 also, the order records that the “matter was kept awaited since morning for the presence of witness Ms. Sudarshan Kaur, as per order dated 10.02.2017” indicating that the petitioner did not appear till after the matter had been called several times. It was only later that adjournment was sought.

16. Not only so, though on 15th February, 2017, the Probate Case was again posted for final arguments on 28th February, 2016 but the petitioner, by filing the application for review, has not allowed the final arguments to be heard till now and for which purpose the Probate Case is now posted on 27th October, 2017 i.e. tomorrow.

17. The conduct of the petitioner does not entitle the petitioner to any relief, least equitable relief. The Court cannot be lured now by the offer to produce witness Ms. Sudarshan Rani on 27th October, 2017.

18. The learned ADJ, in the orders dated 10th February, 2017 and 14th October, 2017, has at length discussed the dilatory tactics which have led to the Probate Case remaining pending for 12 years.

19. I have offered to the counsel for the petitioner that this petition can be disposed of by granting liberty to the petitioner to, if remains aggrieved from the final judgment in the Probate Case, in the remedy if any preferred thereagainst, also take the grounds as taken in this petition but the counsel for the petitioner states that she desires this petition to be disposed of on its merits.

20. No ground for interference in exercise of powers under Article 227 of the Constitution of India with the discretion exercised by the learned ADJ is made out.

Dismissed.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

OCTOBER 26, 2017

‘pp’/gsr..