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

+ CM(M) 75/2018 and CM 2144-2145/2018

NEELAM VERMA

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate  
with Mr. Rajeev Kumar, Advocate

versus

CHAKRESH KUMAR

..... Respondent

Through

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER**

% **19.01.2018**

The impugned order has been passed on 23.12.2017 by the Additional District Judge on the file of probate case no.01/2012 (new no.16018/2016) which was instituted by the petitioner, the respondent being the sole contesting party in such proceedings. The chronology of events, to the extent relevant, as required to be noted here mainly is that the probate case was filed in January 2012 and issues were framed on 05.12.2015 whereafter the petitioner was examined as one of the witnesses (PW-1), the issue of the mental incapacity of the testator not having been raised either in the objections or in the cross-examination of the petitioner or her witnesses examined at that stage. It is the case of the petitioner that the attesting witness P.K. Joshi (PW-2) was recalled and tendered for further cross-examination at the instance of the respondent and it is at that stage that the questions about the mental capacity or otherwise of the testator were raised for

the first time which was reiterated by the respondent in his examination in chief (as R2W1), which part of the testimony, per the submissions, would even be beyond the pleadings. It is the case of the petitioner that faced with such new case being brought up, she was constrained to procure the relevant medical records, by instituting a civil suit, and thereafter she moved an application under Section 151 of the Code of Civil Procedure, 1908 for liberty for production of the additional evidence on the issue, which request has been declined by the impugned order.

It is the grievance of the petitioner that the above chronology and facts have not even been noticed or borne in mind by the trial Court. This plea *prima facie* appears to be correct.

After some hearing, the learned senior counsel for the petitioner submitted that he may be allowed to withdraw the petition and the applications filed therewith and instead approach the trial court with an application for review.

The petition and the applications filed therewith are dismissed as withdrawn with liberty as prayed granted.

*Dasti* under the signatures of the Court Master.

**R.K.GAUBA, J**

**JANUARY 19, 2018**

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