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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 129/2018 & CM No. 4043/2018**

PREM SHANKAR PANDEY Petitioner
Through: Mr. Triloki Pandit, Advocate.

versus

SHAKUNTALA BAIRWA Respondent
Through: Mr. S.C. Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **02.02.2018**

The present petition arises out of suit (CS No. 25747/16) instituted on 09.10.2014 against the petitioner seeking reliefs in the nature of possession/ejectment besides recovery of arrears of rent/*mesne* profits. Concededly, the petitioner is contesting the said suit claiming to be the owner of the subject property placing reliance on a will dated 16.12.1994.

The plaintiff of the suit had concluded her evidence on 03.11.2016. Admittedly, no list of witnesses was filed by the petitioner as defendant in the suit. Admittedly, he availed of four dates of hearing before he examined himself as witness (DW-1) on 18.02.2017. On that date, he sought one more opportunity to examine some additional witnesses which was declined by the trial court. His application under Order XVI Rules 1 and 2 and Order XVIII Rule 17A of the Code of Civil Procedure, 1908 (CPC) filed on 18.03.2017 was dismissed by order dated 14.12.2017. It is the said order which is assailed by the petition at hand.

The respondent has appeared through counsel on advance notice who accepts notice and opposes the petition on the ground the case is ripe for final decision also submitting that in absence of list of witnesses, the opportunity already having been availed, there is no occasion for the same to be enlarged so as to protract the proceedings. During the hearing, the counsel for the petitioner clarified that he wants to examine only one more witness, namely, Mukhtiar Khan who statedly is attesting witness to the will on which he relies upon. The counsel for the respondent submitted since list of witnesses was not filed, the document apparently is forged and fabricated.

At this stage of the proceedings, the Court cannot proceed on such assumptions. It will be a matter of trial to find out whether the document is genuine or otherwise. The question of relevancy will also have to be taken into consideration by the trial Court at the time of appreciation of evidence. *Ex-facie* the document would deserve to be looked into.

Given the fact that the petitioner has been guilty of neglect earlier, the prayer for one opportunity to examine Mukhtiar Khan as additional witness is granted subject to costs of Rs.25,000/- to be paid to the plaintiff of the suit on the next date of hearing.

The learned trial judge will fix a suitable date for the purpose.

With these directions, the petition and the accompanying applications are disposed of.

R.K.GAUBA, J

FEBRUARY 02, 2018

srb

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