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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ TEST.CAS. 56/2009, IA No.14555/2009 (u/O XXXIX R-1&2 CPC),
IA No.16838/2009 (u/S 151 CPC), IA No.4809/2010 (u/S 24 of
Indian Succession Act), IA No.9259/2011 (u/S 192 of Indian
Succession Act) & IA No.2044/2013 (u/S 151 CPC)

DR STYA PAUL Petitioner

Through: Mr. Yashmeet Kaur, Adv.

Versus

THE STATE & OTHERS Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr. K. Datta & Mr. Manish K.
Srivastava, Adv. for R-5.

Mr. K. Datta & Mr. Manish
Srivastava, Adv. for Apeejay Pvt. Ltd.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.02.2018**

1. The petitioner, claiming to be the Class-II heir of his deceased brother Jit Paul, has filed this petition seeking Letters of Administration with respect to the estate of the deceased and impleading respondents no.2 to 5 viz. Lord Swraj Paul, Mrs. Prakash Wati Gupta, Mrs. Bimla Rai and Mrs. Kamla Jindal, being the other brother and sisters of the deceased.
2. The counsel for the petitioner states that since the filing of this petition, the son and wife of another pre-deceased brother of the deceased have filed a petition in the High Court of Calcutta seeking Letters of Administration with Will annexed of the deceased and in which petition an interim Administrator has also been appointed with respect to the estate.
3. The counsel for the petitioner states that since a Will of the deceased has been set up, till the petition before the Calcutta High Court is decided,

the question of the petitioner being entitled to Letters of Administration as a Class-II natural heir does not arise; therefore proceeding in this petition be adjourned *sine die* awaiting the outcome of the petition before the Calcutta High Court.

4. The senior counsel for the respondent no.5 Mrs. Kamla Jindal states that the respondent no.5 has also filed IA No.2044/2013 for the same relief.

5. IA No.16838/2009 has been filed by Apeejay Pvt. Ltd. claiming to be the creditor of the deceased, also bringing before this Court the factum of the proceeding before the Calcutta High Court.

6. The senior counsel for the respondent no.5 states that the respondent no.5 has in fact sought dismissal of this petition for the same reasons.

7. I have enquired from the counsel for the petitioner, what purpose will be served by keeping this petition pending and why should the petition not be disposed of with liberty to the petitioner to apply afresh in the event the right survives after the disposal of the proceedings before the Calcutta High Court or even before that, if required.

8. The counsel for the petitioner states that M/s Kumar Brothers, also claiming to be a creditor of the deceased, also applied to the Alipur Court for Letters of Administration with respect to the estate of the deceased and which petition was dismissed; however appeal thereagainst was allowed and the petitioner has filed a Special Leave Petition before the Supreme Court against the order of the Appellate Court and there is an order of *status quo* owing to pendency of the petition before the Calcutta High Court. The counsel for the petitioner states that if this petition is disposed of as proposed, the petitioner will suffer in the proceedings before the Supreme Court.

9. The senior counsel for the respondent no.5 states that in fact the proceedings before the Supreme Court are also not maintainable owing to the Will having been set up before the Calcutta High Court.

10. In my view, the status of the petitioner as the natural heir of the deceased and the right of the petitioner to oppose and appeal contest against the decision of the Appellate Court in the Alipur proceedings is not dependent upon the pendency of this petition. It is felt that no purpose will be served in keeping this petition pending, by adjourning the same *sine die*, as the proceedings before the Calcutta High court are still at a nascent stage.

11. The senior counsel for the respondent no.5 states that the respondent no.5 had applied to the Alipur Court for being added as a petitioner along with M/s Kumar Brothers; the said application was dismissed by the Alipur Court; however the appeal preferred thereagainst has been allowed by the Calcutta High Court resulting in the respondent no.5 being added as a petitioner in the Alipur Court proceeding along with M/s Kumar Brothers. He further states that the respondent no.5 is not proceeding with the said proceeding as a co-petitioner therein, owing to the Will having been set up as aforesaid.

12. In the aforesaid circumstances, though this petition is disposed of but with liberty to the petitioner to apply afresh for Letters of Administration as and when entitled thereto and with further liberty to the petitioner to, if faces any prejudice, as apprehended, before any Court, seek revival of this petition.

No costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 06, 2018/‘gsr’..

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