

12
\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 540/2017 & CM APPL. 18247-18248/2017**

PRATIBHA & ANR Petitioner
Through: **Mr. RK Sharma, Adv.**

versus

STATE & ORS Respondent
Through: **None.**

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **26.07.2018**

As per record, the respondent nos. 1 & 4 are indicated to have put in appearance during the course of proceedings on i.e. 12.12.2017 there was representation on behalf of the respondent no.1 and the respondent no.4 is indicated to have been represented on the date 11.07.2017. In terms of directions dated 15.05.2017 of this Court, the other respondents have also been served as per proceedings dated 11.07.2017 of the Joint Registrar (Judicial), there was no representation on behalf of the respondents as observed hereinabove for the date.

Submissions have been made on behalf of the petitioner by the learned counsel for the petitioner as averred in the present petition assailing the impugned orders dated 17.03.2017 and 24.04.2017 in PC No.37/09 of the learned trial Court of the ADJ-02 (West) inasmuch as vide order dated 17.03.2017, the grant of a further opportunity to the

CM(M) 540/2017

page no.1 of 3

13

petitioner for leading petitioners' evidence was closed observing to the effect that seven years had already been granted to the petitioner to complete the evidence and no further opportunity could be granted to the petitioner as reflected vide the proceedings of the previous date. Vide the other impugned order dated 24.04.2017 of the learned trial Court, the application under Section 151 of the CPC filed on behalf of the petitioner seeking to lead the petitioners' evidence closed vide order dated 17.03.2017 was also declined. It has been submitted on behalf of the petitioner that there have been regular changes of DSLSA counsel inasmuch as the petitioners could not get appropriate assistance.

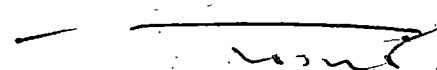
A perusal of the impugned order dated 24.04.2017 *inter alia* indicates vide para-10 of the said order it had been observed that the petitioner had not disclosed the name of the witness, who would prove the signatures of the deceased Shri Omkar Bahadur Parti inasmuch as the petitioner had sought to prove the will of the deceased in the Probate Petition. Learned counsel for the petitioner has placed reliance on the will, copy of which is placed on the record itself indicating the name of the other witness Shri Siya Ram Kapoor is one of the attesting witness to the will of the deceased submitting to the effect that the witness Shri Ashok Vij had already been examined. Taking into account the factum that the will is apparently already on the record of the learned trial Court inasmuch as the true copy of the same is on the record of this Court, the name of the other attesting witness is apparently before the learned trial Court, in these

14
circumstances, one single opportunity is granted to the petitioners to produce the witness Siya Ram Kapoor in support of the averments made in the petition on a date to be fixed on 30.07.2018 by the trial Court. The impugned orders are modified accordingly.

The petition CM(M) 540/2017 is disposed of accordingly.

Copy of this order be sent to the learned trial Court.

Copy of the order be given Dasti, as prayed.


ANU MALHOTRA, J

JULY 26, 2018

vm