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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1959/2024 & CM APPL. 11324/2024**

NEETA BAHL

.....Petitioner

Through: Petitioner in person.

versus

AMARJEET SINGH BEDI AND ORS

.....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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12.11.2024

CM APPL. 64180/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 1959/2024 & CM APPL. 64179/2024 (early hearing)

1. The petitioner impugns the order dated 16.12.2023 passed by the learned ADJ-02/(N-W), Rohini Courts Delhi whereby the application filed by the petitioner under Order XIV Rule 5 read with Section 151 CPC has been dismissed.
2. Record reveals that brother of the petitioner filed the Probate Petition before the learned Trial Court on the basis of a Will executed by his late father. The petitioner is stated to be the contesting respondent before the learned Trial Court. She filed objections to the Probate Petition, one of them being that her father was extremely unwell since last 3-4 years before his



death and was suffering from old age mental and physical problems.

3. The learned Trial Judge vide order dated 25.02.2021 framed the following issues:-

- “1 . Whether the petitioners are entitled for grant of probate, qua the Will dated 07.02.2014, as prayed for in the petition? OPP
2. Whether the petitioner has concealed the material facts, if so, its effects? OPR-2
3. Whether the Will dated 07.02.2014 is forged and fabricated? OPR-2
4. Whether the testator was not of sound mental health at the time of execution of the said Will ? OPR-2
5. Relief.”

4. Thereafter, the petitioner filed an application under Order XIV Rule 5 CPC before the learned Trial Court for amendment of issue No.4. The application was dismissed by the learned Trial Court observing that question of sound mental health has been specifically claimed by the respondent No.2 (petitioner herein in this petition) and therefore, the onus was on her to prove the said issue.

5. The order has been challenged in light of Section 59 of the Indian Succession Act, 1925 which provides as under:-

“59. Person capable of making Wills:-
Every person of sound mind not being a minor may dispose of his property by will.”

6. It is for the propounder of the Will to prove the due and genuine execution of the Will which includes the proof of sound state of mind of the Testator at the time of execution of the Will. This means that the onus is always on the propounder of the Will to prove that the Testator was of sound disposing mind at the time of execution of the Will and therefore the onus has wrongly been placed on the respondent to prove issue No.4.



7. The petition is accordingly allowed with direction that the onus to prove issue No.4 shall lie upon the respondent herein, being propounder of the Will.

RAVINDER DUDEJA, J

NOVEMBER 12, 2024

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