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

+ **CM(M) 276/2025**

RAKHEE MARWAH

.....Petitioner

Through: Mr. Manoj Kumar, Adv. alongwith
petitioner in person.

versus

NATHOO RAM JOLLY AND ANR

.....Respondents

Through: Mr. G. S. Narula & Mr. Vijender
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

11.02.2025

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CM APPL. 8171/2025 (Exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM(M) 276/2025 & CM APPL. 8170/2025 (Stay)

1. The present petition lays challenge to the order dated 04.11.2024 passed by the learned District Judge in CS No. 327/2022 titled as “Nathoo Ram Jolly And Anr. vs Rakhee Marwah” whereby the learned Trial Court permitted the respondents to examine Mr. Joginder Sharma, attesting witness to the will first.

2. The learned counsel for petitioner submits that the order passed by the learned Trial Court is contrary to Order XVIII Rule 3A, CPC which provides that where party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the



Court, for the reasons to be recorded, permits him to appear as his own witness at a later stage.

3. The learned counsel submits that it is important that examination of the petitioner as witness before examination of other witnesses is necessary to bring out truth before the Court in cross-examination in order to prove the falsity, forgey and fabrication of the alleged will.

4. It is further submitted that examination of other witnesses before the petitioner would give petitioner an opportunity to fill loopholes and lacunas in their case.

5. Per contra, the learned counsel of respondent has submitted that provisions under Order XVIII Rule 3A CPC, which requires the parties to be examined first before calling the witness is directory in nature and not mandatory and, therefore, there is no merit in the challenge of the impugned order dated 04.11.2025.

6. It is also submitted that the matter is listed today at 2:00 PM for cross-examination of PW Mr. Joginder Sharma, who has already filed his evidence by way of affidavit and the copy of the same has already been supplied to the petitioner.

7. It is submitted that PW Mr. Joginder Sharma is aged about 75 years and is already waiting in court for his cross-examination today.

8. As is evident from the language Order XVIII Rule 3A provisions, the said provisions is directory and not mandatory inasmuch as, the Court for reasons to be recorded permit the party to appear as his own witness at a later stage.

9. The learned Trial Court taking note of the submissions of the respondents that the age of the attesting witness Mr. Joginder Sharma is



more than 75 years, permitted the respondents to examine him first.

10. Considering that the provisions of Order XVIII Rule 3A CPC being directory and not mandatory and as also the fact that the witness Mr. Joginder Sharma who has been ordered to be examined is aged more than 75 years and is present today before the Trial Court, the Court is of the view that petitioner would not suffer any prejudice by examination of such witness before the examination of the respondents and considering the age of the witness, it may not be apposite that witness be called again and again to court.

11. In my view, this is not a fit case where the Court should exercise its discretion under Article 227 of the Constitution of India to interject in the order passed by the learned Trial Court.

12. Court thus finds no merit in the present petition, the present petition is accordingly dismissed.

RAVINDER DUDEJA, J

FEBRUARY 11, 2025/sky