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

\# **CNR No. DLHC010531422026**

\+ CM(M) 2408/2026 & CM APPL. 76466/2026

USHA RANI .....Petitioner

Through: Mr. Rajiv Takbi, Mr. A.P. Verma and Mr. Sanjay Verma, Advocates

versus

STATE (GOVT. OF NCE OF DELHI) & ORS. .....Respondents

Through: Ms. Avni Singh, Panel Counsel, GNCTD with Mr. Vaibhav Sharma, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

O R D E R

% 03.11.2026

CM APPL. 76467/2026 *(Exemption)*

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CM(M) 2408/2026

3. Through the present petition, the petitioner/plaintiff impugns the order dated 08.09.2026 passed by the learned District Judge-05, Central, THC, Delhi, in PC 23/2017, titled *"Usha Rani v. State"*, whereby the learned Trial Court dismissed the petitioner's application under Section 151 of the Code of Civil Procedure, 1908 ("CPC"). The operative portion of the impugned order is extracted hereinbelow:

> "10. This court is conscious of the fact that the exercise of proving the Will in terms of Section 68 of Section 69 of the Indian Evidence Act is a very crucial and substantiate right of the petitioner which can either make

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> or break his case. However, this court is of the opinion that unless and until, the other attesting witness is examined or any prove to the fact that he is also not available to depose, the present application is pre-mature. It is also pertinent to note that the present application is completely silent about the other attesting witness as to his availability to depose.
>
> 11. Accordingly, the present application is dismissed as pre-mature with liberty to the petitioner to file the same once the other attesting witness is examined or report to the effect of his non-availability is brought on record.
>
> 12. Put up for PE on 03.11.2026. Petitioner is directed to move an appropriate application to summon the another attesting witness with advance copy to the respondents."

4. It is submitted by the learned counsel for the petitioner that *vide* the impugned order, the learned Trial Court has directed the petitioner to serve the other attesting witness again. It is added that when the petitioner initially attempted to serve this other witness i.e., Mr. Raju s/o Mr. Udho Ram, the process server's report dated 07.02.2023, recorded that he was untraceable at the given address i.e., A-3, Kiran Garden, Nawada, New Delhi.

5. At this stage, the learned counsel appearing on behalf of the petitioner does not press the reliefs sought in the present petition but instead seeks the liberty of this Court to move an appropriate application before the learned Trial Court, bringing the aforesaid facts within the knowledge of the learned Trial Court and for appropriate orders thereon.

6. Liberty granted.

7. In view of the above terms, the present petition along with pending applications, if any, stands disposed of.

AJAY DIGPAUL, J

NOVEMBER 3, 2026
gs/as

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