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

% ***Date of Decision: 01st May, 2025***

+ **CM(M) 651/2025 & CM APPL. 20628/2025**

INDU BHUTANI

.....Petitioner

Through: **Mr. Sanjeev Kumar Dubey, Sr.**
Advocate with Mr. Deepak Bidhuri
and Mr. Shah Rukh Khan, Advocates.

versus

RAKESH KAPOOR & ORS.

.....Respondents

Through: **Ms. Zeba Khair, Mr. Sitwat Nabi and**
Ms. Aditi Chaudhary, Advocates
(through V.C.)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Respondents herein have filed a suit seeking cancellation of a registered *Will* dated 25.11.1997.
2. Admittedly, the case is already at the stage of final arguments.
3. The stand of the petitioner/defendant No.1 is very short and precise.
4. When the case was at the stage of trial, the petitioner/defendant No.1 wanted record to be produced which was containing statement recorded by Revenue Authority i.e. Tehsildar, Mehrauli, New Delhi.
5. According to her, the attesting witness to the *Will* in question had made statement before such Authority and, therefore, she, merely, wanted to place on record such statement made by one of the attesting witnesses.
6. Mr. Sanjeev Dubey, learned Senior Counsel for the petitioner submits that earlier when the abovesaid witness was summoned, one official appeared



before the learned Trial Court and apprised the Court that the record had been sent to the Office of Deputy Commissioner and, therefore, the relevant record could not be produced.

7. It seems that thereafter, defendant No.1 was directed to take some steps to summon such record from the Office of the concerned District Collector but no such steps were taken, reportedly, for the reason that such record was not traceable.

8. Subsequently, the petitioner/defendant No.1 apprised the learned Trial Court that the abovesaid record had been traced out and a certified copy of such statement was also obtained by her. It was in the abovesaid backdrop that she moved an application before the learned Trial Court seeking permission to place on record statement of one such witness i.e. Mr. Vijay Nanda by calling the concerned official.

9. Such request has been declined.

10. Learned counsel for the respondents/plaintiffs submits that during trial, the petitioner/defendant No.1 had ample opportunity to call for the aforesaid record but, for the reasons best known to them, no concrete step was taken by them and now when the case has reached at the final stage, they should not be given any indulgence. A question mark has also been put by the respondents/plaintiffs with respect to the authenticity of any such statement made by any such person.

11. The matter is, reportedly, fixed for tomorrow i.e. 02.05.2025 before the learned Trial Court.

12. Keeping in mind the overall facts and circumstances of the case and also appreciating the fact that the abovesaid record was earlier permitted to be



summoned by the learned Trial Court itself, the present petition is disposed of with the following directions:-

- (i) One final opportunity is granted to defendant No.1 to call the concerned witness with the relevant record.
- (ii) Since the case is fixed before the learned Trial Court tomorrow i.e. 02.05.2025, an application, to that effect, shall be filed, tomorrow itself.
- (iii) In case any such application is submitted before the learned Trial Court, as per the directions to be given in this regard by the learned Trial Court, requisite steps be taken for summoning the abovesaid witness.
- (iv) The learned Trial Court, subject to its convenience and Board position, may give a short date and may call the abovesaid witness, as expeditiously as possible and, preferably, within four weeks.
- (v) It is clarified that defendant No.1, in this regard, would be entitled to only one, though, effective opportunity.
- (vi) For causing delay in the matter, defendant No.1 is also burdened with cost of Rs.10,000/- which would be paid to the plaintiff/learned counsel for the plaintiff tomorrow itself.
- (vii) It is clarified that this Court has, merely, granted permission to call the abovesaid official with the relevant record and has not given any observation with respect to the evidentiary value and admissibility of such record and it will be entirely up to the learned Trial Court to consider the above aspect and to decide the same in accordance with law.
- (ix) The abovesaid order is without prejudice to the rights and contentions of the respective parties.



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13. The petition stands disposed of in aforesaid terms.
14. All the pending applications also stand disposed of accordingly.

(MANOJ JAIN)
JUDGE

MAY 01, 2025/st/js