

**Jitender Sarin Vs. State & Ors.**

20.05.2023

Present: Sh. Saumitra Singhal, Ld. Counsel for the petitioner.  
Sh. S. S. Jain, Ld. Counsel for respondent no.2.  
Sh. Manas, Ld. Counsel for respondent no.3 to 5.  
Sh. Amit Shanker Pandey (PW) in person.

Sh. Amit Shanker Pandey (PW-3) is examined and discharged.

No other PW is present despite service.

Hence, issue Show-Cause Notice to the other witnesses on filing of PF who remained absent despite service and several calls.

It is submitted by the Ld. Counsel for respondent no.3 to 5 that he has filed an application for recalling of the order dt. 04.02.23. Admittedly, copy of the same has already been supplied to the Ld. Counsel for the petitioner.

Arguments on the application heard.

It is the contention of the applicants/respondent no.3 to 5 that the case was listed on 04.02.23 but the counsel for the respondent no.3 to 5 was unable to attend the court due to some medical emergency as the counsel's wife was unwell and he had to take her to Doctor. That in the said circumstances, the counsel was unable to make the arrangement for other counsel to appear before the Court. That the cross-examination of petitioner's witness by respondent no.3 to 5 is important and crucial and accordingly, order dt.04.02.23 be re-called by granting an opportunity to cross-examine the petitioner's witnesses namely Sh. Avatar Krishan Dhingra and Sh. Hitesh Kumar Guliani.

The application is opposed by the other respondents by submitting that even the counsel, who has appeared today was

not duly authorized on the day in question. It is also contended that there were several advocates on behalf of respondent no.3 to 5 but none of them appeared before the court on 04.02.23. That the application is devoid of merits and is liable to be dismissed.

The application is not opposed by the side of the non-applicant/petitioner. However, it is stated that the application be allowed subject to costs.

Heard. Record perused.

This is a probate case filed U/S 276 of Indian Succession Act, which is pending since March, 2021 wherein issues were settled on 28.04.22. Thereafter, PW-1 & PW-2 were examined and discharged on 04.02.23 and the cross-examination was nil on behalf of respondent no.3 to 5 as none has appeared.

For the sake of arguments, if the contents of the application are presumed to be correct, there is nothing on record to make the court believe that the wife of the Ld. Counsel for the applicants was advised for any medical rest. Moreover, the Ld. Counsel for the applicants was not duly engaged on behalf of the applicants on the relevant day as his vakalatnama is dt. 13.02.23. No doubtedly, the right to cross-examine the witness of the opposite side is very important right available to each and every litigant.

In the interest of justice and considering all the facts and circumstances, **the application is allowed**, subject to cost of Rs. 10,000/-.

The application stands disposed off.

Be listed for cross-examination of PW-1 & PW-2 on **04.09.2023.**

(Rajinder Kumar)  
ADJ-02/(N-W), Rohini Courts,  
Delhi/20.05.2023