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

+ TEST.CAS. 76/2008

MS. MADHAVI AHLUWALIA & ORS

..... Petitioner

Through: Mr. Varun Kapur, Adv.

versus

STATE

..... Respondent

Through: Mr. Sudheer Pandey, Adv.

CORAM:

MS. DEEPALI SHARMA (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

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26.02.2018

I.A. No.1888/2018 filed on behalf of the objector under Order 16 Rule 1, 2 & 3 CPC for summoning of witnesses.

By way of the present application, the applicant/objector wishes to summon Dr.Saurabh Vats to tender expert evidence qua the mental health of the testator at the time of alleged authoring of the subject Will and to summon Pt. Ashok Kashyap as a handwriting expert to tender expert evidence qua the genuineness/forgery of the signature of the testator on the alleged Will.

The present application has been, vehemently, opposed by the counsel for the petitioner who states that in terms of the order dated 02.12.2015 the objector was granted last opportunity to file his affidavits and to lead its evidence.

Subsequently, the list of witnesses was filed by the objector in April, 2016. It is stated that the witness Pt. Ashok Kashyap is not mentioned in the list of witnesses. It is also stated that no foundation has been made by the respondent to lead the evidence of Dr. Saurabh Vats, who is mentioned in the list of witnesses.



Counsel for the objector states that Dr.Saurabh Vats has never treated the testator, however, he wishes to lead his evidence owing to the fact that the objector has obtained second opinion from him as regards the medical condition of the testator and, therefore, he wishes to examine him as a witness. Admittedly, no such opinion/report of the said doctor is on record. In these circumstances, it is evident that the objector proposes to summon the said doctor to prove his second opinion which is not even a part of court record. The objector is, therefore, not permitted to summon the said witness.

As regards the other witness, namely, Pt. Ashok Kashyap, who is proposed to be summoned as a handwriting expert to tender expert evidence qua the genuineness/forgery of the signatures of the testator on the alleged Will, the objector has laid no foundation to summon the said witness. Neither the said witness is mentioned in the list of witnesses nor any report of the expert witness has been filed/has been placed on record on orders of Court at an earlier stage. In these circumstances, the objector is not permitted to summon the said witness also.

The application filed by the applicant/objector is accordingly dismissed. I.A. stands disposed of.

DEEPALI SHARMA (DHJS)
JOINT REGISTRAR (JUDICIAL)

FEBRUARY 26, 2018/nk