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

Date of Reserve: October 20, 2008
Date of Order: November 03, 2008

+CM(M) 1473/2007

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03.11.2008

Dharam Prakash & Ors.

...Petitioners

Through: Mr. A.S. Dahiya, Adv.

Versus

Chander Karan & Ors.

...Respondents

Through: Mr. A. K. Gupta, Adv.

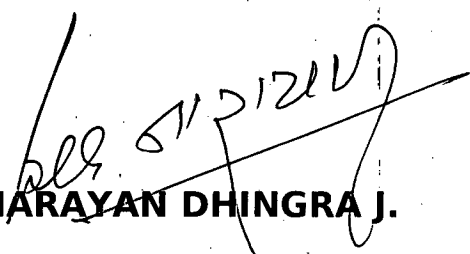
JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

The matter is directly covered by my order in CM(M) No. 1472/2007. The petition is dismissed in view of my judgment in CM(M) No.1472/2007.

November 03, 2008
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SHIV NARAYAN DHINGRA J.

CM(M) 1473/2007

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JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
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3. Whether judgment should be reported in Digest ?

JUDGMENT:

1. The petitioner is aggrieved by an order dated 12th July, 2008 whereby an application made by the petitioner under order 22 Rule 3 CPC to bring LRs of deceased, plaintiff no. 7, was dismissed by the learned Civil Judge on the ground that the application was neither signed by the LRs of deceased plaintiff nor it was supported by an affidavit of any of the LRs of deceased plaintiff.

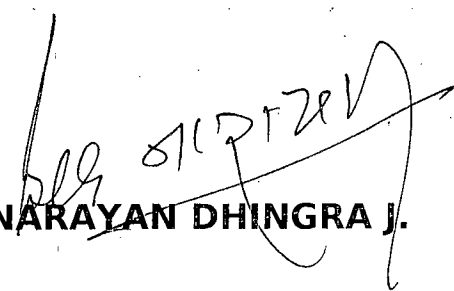
2. It is apparent from the petition that there were many plaintiffs in this case and during pendency of the petition one of the plaintiff died. His LRs did not make any application and one of the co-plaintiff made an application to bring LRs on record and the learned Civil Judge dismissed the application.

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3. A person becomes plaintiff by choice. He has to decide whether he wants to file a case or pursue a case or not. A plaintiff can withdraw from the case at any stage during pendency of the case. A person cannot be forced to be a plaintiff. If a plaintiff dies, his LRs cannot be forced to become plaintiffs in the suit and they cannot be substituted without their consent and without their willingness. If they are willing to be substituted, they have to make an application under Order 22 Rule 3 and the Court is bound to consider such an application. But they cannot be made to join the suit against their wishes and suit as far as deceased plaintiff is concerned has to abate. However, if co-plaintiffs feel that the presence of the LRs of deceased plaintiff was necessary to adjudicate upon the matter in issue and the LRs had not made an application under Order 22 CPC then the co-plaintiff can make an application to bring on record such LRs as defendants. Co-plaintiff cannot force LRs of deceased plaintiff to be joined as a plaintiff.

4. I consider that the Trial Court rightly dismissed the application as it was not signed by the LRs and not supported by their affidavit. I find no force in the petition. The petition is hereby dismissed.

November 03, 2008
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SHIV NARAYAN DHINGRA J.