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

+ **CS(OS) 1222/2003**

RAVI DEWAN & ORS Plaintiffs
Through: **Ms. Sapna Chauhan, Adv.**

Versus

DARSHAN & ANR Defendants
Through: **Ms. Anubha Kaushal, Adv. for D-2.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.09.2016**

IAS No.4007/2016 & 4009/2016 (both of plaintiffs for restoration of suit dismissed in default on 5th February, 2016 and for condonation of 9 days delay in applying therefor)

1. Pursuant to the notice issued, the counsel for the non-applicant/defendant No.2 Master Manmohit Singh appears; she informs that the non-applicant/defendant No.1 died and the non-applicant/defendant No.2 is the only heir of the non-applicant/defendant No.1.

2. On enquiry, it is further informed that the non-applicant/defendant No.2 Master Manmohit Singh has since attained majority.

3. The counsels have been heard.

4. Though the applicants/plaintiffs in the applications have merely passed on the blame on the earlier advocate engaged by them, without setting out as to what steps the applicants/plaintiffs took for pursuing the matter with the advocate or whether the applicants/plaintiffs had cleared the

fee and other dues also of the advocate, but it is deemed appropriate to condone the delay in applying for restoration and to restore the suit to its original position, subject to the applicants/plaintiffs paying costs of Rs.20,000/- to the counsel for the non-applicant/defendant No.2 on the next date of hearing. If the costs are not paid, the applications shall be deemed to be dismissed and the suit would continue to remain dismissed in default.

5. The applications are disposed of.

CS(OS) 1222/2003 & IA No.6068/2015 (of plaintiff u/O 32 CPC) & OA No.77/2014

6. The valuation of the suit is found to be below the enhanced minimum pecuniary jurisdiction of this Court.

7. The suit, in accordance with the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice in exercise of powers under Section 4 of the Delhi High Court (Amendment) Act, 2015, is liable to be transferred to the District Court.

8. The suit *inter alia* claims the reliefs with respect to the properties mentioned in para 20 of the plaint. Para 20 of the plaint lists three immovable properties at Munirka, Bhikaji Cama Place and Janak Puri, besides movable properties. The defendant No.2 is shown to be the resident of the property at Munirka. The plaintiffs No.1&3 are residents of United States of America (USA) and the plaintiff No.2 is resident of Punjab.

9. In these circumstances, both the counsels agree that the jurisdiction will be of the District Judge (New Delhi District) Patiala House Courts, New Delhi, within whose jurisdiction the properties at Munirka and Bhikaji Cama Place fall.

10. However, before the suit is transferred, OA No.77/2014 being chamber appeal preferred by plaintiffs against order dated 19th March, 2014 is to be considered.

11. The learned Joint Registrar vide said order dated 19th March, 2014 dismissed IA No.5135/2014 of the plaintiffs to bring on record the legal representative of defendant No.1 for the reason that defendant No.1 died on 15th October, 2013 whereas the applications for substitution were filed on 15th March, 2014 and that the suit insofar as against the defendant No.1 stood abated on expiry of period of limitation prescribed for applying for substitution.

12. As per the amended memorandum of plaint dated 22nd February, 2006, besides the defendant No.1, Master Manmohit Singh son of defendant No.1 was impleaded as defendant No.2. The plaintiffs by IA No.5135/2014 which has been dismissed by the Joint Registrar brought on record the fact of demise of defendant No.1 with defendant No.2 being the only known legal heir. It would thus be evident that the legal heir of defendant No.1 was already on record and thus the question of the suit abating as erroneously held by the Joint Registrar does not arise.

13. OA No.77/2014 is accordingly allowed and the factum of demise of defendant No.1 with defendant No.2 as only legal heir is taken on record.

14. Amended memorandum of parties be filed by the plaintiffs.

15. IA No.6068/2015 has been filed by the plaintiffs to bring on record the factum of defendant No.2 having attained majority during the pendency of the suit.

16. The same is also allowed and the necessary corrections be made in the amended memorandum of parties to be filed, as aforesaid.

17. The suit is accordingly transferred to the Court of District Judge (New Delhi District) Patiala House Courts, New Delhi.

18. The parties to appear before the Court of the Additional District Judge / District Judge (New Delhi District) Patiala House Courts, New Delhi on 26th October, 2016.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 08, 2016

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