

\$~11

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

+ RFA (OS) 25/2015, CM APPL.24336/2016

TAHILIANI DESIGN PVT LTD Appellant
Through: Ms. Geetanjali Visvanathan, Advocate.

versus

RAJESH MASRANI THR LRS Respondent
Through: Ms. Jyotika Kalra, Advocates for LRs of
respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

13.07.2016

The present appeal is directed against an order made by the learned Single Judge in a chamber appeal. The impugned order has in effect recorded that the appellant's suit for copyright infringement and damages did not survive and had abated.

The facts are that the appellant had sued one Rajesh Masrani, the sole proprietor of M/s Silk Galaxy alleging copyright infringement. The reliefs claimed were permanent injunction and damages. Upon his death, the appellant attempted to have the heirs of the said late Rajesh Masrani substituted and impleaded as defendants. The Joint Registrar was of the opinion that having regard to the reliefs claimed, the claim for substitution was impermissible. The learned Single Judge concurred with that view

and was of the opinion that since the action for damages did not lie on account of it being a suit of personal nature and that the right to sue did not survive against the legal heirs of the sole defendant. Likewise, injunction in the suit being a personal relief and the defendant being the sole proprietor this claim too abated.

It was submitted by counsel for the appellant that one of the legal heirs of the original defendant Rajesh Masrani has consented to the undertaking terms and has undertaken to not infringe upon the copyright of the plaintiff. It is urged that this Court should take the said undertaking on the record and pass suitable orders.

This Court is of the opinion that claims for two reliefs sought in the suit did not survive the death of the sole defendant and had in fact abated. Under these circumstances, the respondents cannot be compelled to furnish an undertaking in a proceeding which does not exist or cannot be taken cognizance in law. It is, however, open to the appellant to seek its remedies in case of any infringement of its rights in future by the heirs of Rajesh Masrani including his wife if they or she choose to carry on any business results in injury.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JULY 13, 2016

/vikas/