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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 479/2015 & C.M. No.9431/2015 (stay)
RAKESH MOHAN

..... Petitioner

Through Ms. Babita Seth, Adv.

versus

NANKI DEVI & ORS.

..... Respondents

Through Mr. Amit Kumar, proxy counsel
along with R-1 in person.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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27.01.2016

Order impugned before this Court is the order dated 22.11.2014 passed by the learned Additional District Judge who had endorsed the finding returned by the Civil Judge dated 07.10.2014. The Civil Judge had dismissed the suit of the plaintiff. There are two concurrent facts of finding against the petitioner.

Record shows that the present suit has a chequered history. The suit had been filed by the plaintiff for recovery of a petty amount of Rs.7,470/- which was claimed as arrears of rent against the defendant. Issues were framed by the Trial Judge in September, 1996. Evidence of the plaintiff was recorded in part. It was at that stage that an application filed by the defendant seeking amendment of the written statement which had been declined. The plaintiff evidence stood closed on 04.10.2011. On 20.04.2010, in the course of the proceedings, the suit of the plaintiff stood dismissed in default as

none had appeared for the plaintiff. The plaintiff filed an application seeking restoration of the suit which was allowed vide order dated 29.11.2001 and the suit was restored to its original number. In the course of the proceedings, the defendant died. This was in the year 2012. The matter remained pending as the legal representatives of the deceased defendant had to be brought on record. The matter got delayed only for this reason and time and again adjournments were granted. On 28.04.2014, since the address of the daughter of the deceased defendant was not known, the plaintiff was granted liberty to get the impleadment application served upon the legal representatives by publication on the last available address. On 17.07.2014, none had appeared for the plaintiff and the Court had passed a direction that the last direction contained in its order dated 28.04.2014 be complied with.

As noted supra, there are two concurrent findings of fact returned by the two Courts below. This Court is sitting in writ jurisdiction. Unless and until there is a patent illegality or a perversity in the fact findings returned by the two Courts below, this Court may not interfere. Both the orders have been passed noting the correct factual matrix and noting the submission made by the learned counsel for the plaintiff that on a sudden medical problem suffered by the plaintiff when the matter was called, none had appeared on behalf of the plaintiff, was not a sufficient ground seeking restoration of the suit in view of the fact that it was not only the plaintiff who was absent but nothing prevented the lawyer representing him to appear before the Court.

Moreover, the chequered history already noted supra also appears as a hurdle in the way of granting any relief to the plaintiff; additionally the amount claimed is a petty amount of Rs.7,470/-.

Petition is accordingly dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

JANUARY 27, 2016

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