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

+ CM(M) 747/2016

KISHAN LAL (SINCE DECEASED) THR LR Petitioner
Through Mr. M.V.K. Khurana, Advocate.

versus

ISHWAR DEVI HASIJA Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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22.08.2016

CM No. 28024/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 747/2016 and 28083/2016 (interim relief)

1. By the present petition, the petitioners seek to impugn the order dated 07.06.2013 by which the ARC allowed the application of the respondent filed under Order 22 Rule 4 CPC to bring on record the LR's of the deceased respondent therein/the petitioner.
2. The petition has been filed against the predecessor of the petitioner who died on 29.01.2011. It was the contention of the petitioner that as the petition has been filed against a deceased person, the petition is not maintainable.
3. The trial court however by the impugned order relying upon the judgment of the Supreme Court in the case of *Karuppaswamy & Ors. vs. C.Ramamurthy*, AIR 1993 SC 2324 and other judgments concluded that a

petition against a dead person is not a nullity. The ARC made the petitioner a party under Order 22 Rule 4 CPC.

4. Learned counsel appearing for the petitioner has relied upon Section 25A and 25B of the Delhi Rent Control Act to contend that the provisions of Chapter IIIA are mandatory and the provisions of CPC cannot be borrowed to override the said provision. He submits that as per the special procedure provided, the tenant on service of a notice of a petition under the said provision has to file his leave to defend application within 15 days. As the predecessor of the petitioner had passed away, there was a possibility that the respondent may walk away with an ex parte eviction order.

5. In my opinion, the contentions of the learned counsel for the petitioner are without merits. Rule 23 of the Delhi Rent Control Rules, 1959 reads as follows:

“23. Code of Civil Procedure to be generally followed.—In deciding any question relating to procedure not specifically provided by the Act and these rules, the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code, of Civil Procedure, 1908.”

Hence, in procedural matters, the ARC shall be guided by the provisions of CPC.

6. The legal position pertaining to Order 22 CPC regarding filing of a petition against a deceased person would also apply in the facts of the present case.

7. In the case of *Karuppaswamy & Ors. v. C.Ramamurthy*, AIR 1993 SC 2324 (supra), the Supreme Court was dealing with a matter in which only defendant impleaded in the suit had died six weeks prior to institution.

Summons sent to the deceased defendant were returned back with the remark that defendant was dead. In that background, the trial court has permitted substitution of the LRs in exercise of power under Order 22 Rule 4 CPC. The Supreme Court on these facts held as follows:

“9. Thus in our opinion the course set out in Munshi’s case (AIR 1983 SC 271) (supra) is attracted to the instant case since the High Court has found that the plaintiff-respondent had acted in good faith and had committed mistake in that frame of mind. Munshi’s case, in our view, should clear the way in favour of the plaintiff-respondent, ending in dismissal of this appeal.”

8. Apart from the above, in that case the Supreme Court was also dealing with the contention about the applicability of Section 21 of the Limitation Act. That issue has not been raised in the present matter. The trial court has rightly impleaded the LRs of the deceased respondent as a party to the present petition.

9. Regarding the contention of the petitioner that when a petition is filed against a dead respondent, there is an eventuality of the summons being served and in the absence of an application for leave to defend being filed within the stipulated period of 15 days, landlord/respondent would get a walk over, and an eviction order would follow without the LR’s receiving intimation. The contention is misplaced.

10. In the first instance, in case the respondent has died, the question of effecting service of summons on that respondent would not arise. The report would come back unserved, stating about the said event has taken place, i.e. the death of the respondent. The said contention does not support the submission of the petitioner that Order 22 Rule 4 CPC is not applicable where an eviction petition is filed against a dead respondent.

11. There is no merit in the petition. Accordingly, the petition is dismissed.

JAYANT NATH, J

AUGUST 22, 2016

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