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

+ CM(M) 773/2016 and CM Nos. 29337-29338/2016

MAMTA NAGPAL Petitioner
Through Mr.Vikram Singh and Mr.Rajeshwar
Nagpal, Advs.
versus

LOVLEEN & ANR Respondent
Through Ms.Payal Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **12.08.2016**

1. By the present petition the petitioner seeks to impugn the order dated 1.8.2016 by which the application filed by the petitioner under Order 7 Rule 11(a) CPC read with Order 1 Rule 10(2) CPC for rejection of the plaint was dismissed. It is the contention of the petitioner that as per averment in the plaint the deceased/defendant whose LR is the petitioner, was stated to be a licensee in the suit property. It is the contention of the petitioner that if the deceased defendant is considered as a licensee then no right to sue survives upon the legal heirs and hence it was their contention that the plaint be dismissed and the LRs of the deceased be struck off from the array of parties.
2. The trial court noted that the application is filed at the stage of final arguments. It was also noted that this is another attempt to scuttle the final arguments in a litigation which has been pending now for almost 17 years.
3. The trial court also noted that earlier also attempts have been made to file one or the other application to somehow defer the final outcome of the case. Trial having been concluded. It was also held that the application is an abuse of process of law. The application was accordingly dismissed.

4. Learned counsel for the petitioner has vehemently made his submissions. It is his contention that the legal heirs of a deceased licensee cannot be impleaded as right to sue does not survive. He submits that a license is personal right. Once a license holder expires, the right to sue does not survive to legal heirs.

5. Learned counsel appearing for the respondent on advance service has pointed out that the trial court has already heard final arguments and has kept the matter now for orders. It would follow that now under Order 20 Rule 1 the matter is merely adjourned for judgment and no further proceedings are to be held in the present case.

6. As far as the contention of the petitioner that they have been wrongly impleaded as a party is concerned as right to sue does not survive, the contention is entirely misplaced. Admitted position is that they have themselves applied to be impleaded as LR's of the deceased defendant. The stage to make these submissions was when the court sought to implead them as LR's of the deceased defendant. Even otherwise they have not been able to in any manner show on what basis they claim that on expiry of the defendant the right to sue does not survive.

7. Even otherwise, the entire basis of the contention of the petitioner are misplaced. When an application under Order 7 Rule 11 CPC is filed, the court is to only to consider the averments made in the plaint. The defence of the defendant is not to be gone into. It is obvious that the application under Order 7 Rule 11 CPC has been filed without any basis whatsoever inasmuch as the defendant is seeking dismissal of the suit based on his defense.

8. The petition is without merit and is dismissed.

JAYANT NATH, J

AUGUST 12, 2016/n

