

\$~A-40

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

+ CM(M) 1001/2016 & CM No.36548/2016

RAJAN PAUL

..... Petitioner

Through Mr.Arvind Kumar and Ms.Sneha,
Advs.

versus

KAMLESH AWASTHI SINCE DECEASED

REPRESENTED BY LRS

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **03.10.2016**

1. By the present petition the petitioner seeks to impugn the order dated 7.9.2016 by which the application filed by the plaintiff/respondent for bringing on record the LRs of the deceased plaintiff/respondent beyond the period of limitation of 90 days was allowed. Learned counsel appearing for the petitioner submits that the plaintiff died on 21.12.2015 and after the lapse of 90 days the suit abated and was hence dismissed as abated on 29.3.2016. He submits that without there being a formal application for setting aside the abatement order under Order 22 Rule 9 CPC the trial court has set aside the abatement order.

2. A question was posed to the learned counsel for the petitioner as to what prejudice is caused to the petitioner by the said right infraction of the Civil Procedure Code. He submits that the petitioner is also ex parte before the trial court and his application for setting aside the ex parte proceedings

was delayed due to abatement of the suit.

3. In my opinion, the alleged deficiency pointed out by the petitioner is at best a curable defect. No prejudice is caused to the petitioner. The petition is dismissed. Needless to add that no observations have been made herein which would prejudice the applicant when his application for setting aside the ex parte proceedings against him is considered.

4. Petition is dismissed. All pending applications, if any, also stand dismissed accordingly.

JAYANT NATH, J

OCTOBER 03, 2016

n