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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 556/2015 and CM No. 10620/2015
PYARE LAL

..... Petitioner

Through Mr. J. K. Jain and Ms. Vineeta,
Advocates

versus

JAGDISH & ORS

..... Respondents

Through Mr. Manoranjan, Advocate

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **16.05.2016**

Petitioner is aggrieved by the order dated 31.03.2015 wherein the Court had suo-moto reviewed an order dated 23.02.2010. Vide order dated 23.02.2010, the proceedings against deceased defendant No. 2 had stood abated. He was the respondent No.2 before the Appellate Court i.e. before the Court which had passed an order dated 23.02.2010. In fact it was on the statement made by the appellant / plaintiff that since no right to sue survives against the LRs of deceased / respondent no. 2, the appeal against the respondent 2/ defendant No. 2 stood abated.

On 31.03.2015 the Court had illegally reviewed an order dated 23.02.2010 passed five years ago. It had passed this order suo-moto. It had noted the objections raised by defendant No. 1 but had held that since the rights of the LRs of deceased / defendant No.2 might be

affected they should be given a chance to contest the appeal. This order has been challenged by the learned counsel appearing for the petitioner / defendant no.1 (in the Trial Court).

Record shows that the present suit is a suit for injunction which has been filed by the plaintiff against the two defendants. Both of them were contesting the proceedings. Suit of the plaintiff stood dismissed. He had filed an appeal before the Appellate Court. Before the Appellate Court defendant no.2 / respondent No. 2 stood expired. This has been brought to the notice of the Appeal Court. The Appeal Court had in fact noted that it was on the statement made by the appellant/ plaintiff that since no right to sue survives against the LRs of deceased / respondent no. 2 appeal qua respondent no.2 stands abated. This is clearly stated in the order dated 23.02.2010. The subsequent impugned order dated 31.03.2015 reviewing this order had committed a wholesome illegality. Once the appeal stood abated without any application on record (which would admittedly be much beyond the period of limitation) and the Court had also ignoring the fact that it has a positive statement given by the plaintiff himself that the appeal had stood abated had again gone on to review the order. The Appeal Court had ignored not only substantive law but also all procedures enlisted by the legislature. It is not in the whims and fancies of the Court to pass any order that it feels like. It is on the basis of the record which permits the Court to pass an order. The impugned order having reviewed a order vide which the appeal stood abated qua respondent No.2 in February, 2010 and having reviewed it

more than five years later i.e. in March 2015 when there was a positive statement made by the plaintiff himself in this regard is indeed a perverse order. Counsel for the non applicant / plaintiff on this count submits that it was due to an inadvertence that he had made such a statement before the Appellate Court in February, 2010. This Court is not inclined to accept this explanation.

Impugned order in this perspective is set aside. Petition allowed and disposed of in above terms.

INDERMEET KAUR, J

MAY 16, 2016

Gb