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

% *Date of Decision : February 09, 2016*

+ **W.P.(C) 11068/2015**

ROHINI KANOI AND ANR ..... Petitioners  
Represented by: Ms.Gurkamal Hora Arora, Advocate

versus

ALLAHABAD BANK AND ORS ..... Respondents  
Represented by: Mr.Ashim Vachher, Advocate with  
Mr.Parvash Piyush, Advocate for R-1  
Mr.Irfan Ahmed, Advocate for R-2

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**PRADEEP NANDRAJOG, J. (Oral)**

1. Allahabad Bank filed OA No.85/2004 under Section 19 of The Recovery of Debts Due to Bank and Financial Institution Act, 1993, impleading M/s East India Syntax Ltd. as respondent No.1 and Arun Garodia son of late Sh.N.P.Garodia as respondent No.2, pleading therein that respondent No.1 was the principal borrower and late Sh.N.P.Garodia and Arun Garodia were the guarantors. Informing that N.P.Garodia had died, it was pleaded that Arun Garodia was impleaded in a dual capacity : guarantor himself and as the legal heir of N.P.Garodia.
2. Proceedings continued.

3. The Bank filed an application to amend the original application and implead Arvind Garodia and Sushila Devi as respondents No.2A and 2B on the plea that the two were also the legal heirs of Sh.N.P.Garodia and concerning guarantee stood by Sh.N.P.Garodia would be a necessary party. The two were impleaded.
4. The year 2014 arrived. The bank filed IA No.189/2014, pleading that the petitioners, being the grand-children of N.P.Garodia, should be impleaded as respondents No.2C and 2D.
5. Without notice to the petitioners, the application was allowed on October 13, 2014 and thereafter notice in the original application was issued to them. On being served the two filed IA No.523/2015 pleading that they were not the class I heirs of N.P.Garodia and no will was executed by him making any bequest in their favour. They pleaded that they should be deleted as respondents in the original application. They pointed out that in the application filed by the bank pursuant where to they were impleaded as respondents, a bald averment was made that estate of N.P.Garodia had devolved upon them and there was no material to justify the bald assertion. The pleading was vague that in what manner the two inherited the estate of N.P.Garodia.
6. Said application filed by the petitioners has been dismissed by the Debts Recovery Tribunal vide order dated August 20, 2015, observing whether the petitioners have inherited any property of N.P.Garodia would be decided when the original application filed by the bank is decided.
7. Challenge to the order dated August 20, 2015 failed before the Debts Recovery Appellate Tribunal when Misc.Appeal No.300/2015 filed by the petitioners against said order was dismissed by the Debts Recovery

Appellate Tribunal vide impugned dated October 07, 2015. The reasoning given by the Debts Recovery Appellate Tribunal is the same as given by the Debts Recovery Tribunal.

8. It is trite that upon the death of a guarantor, if the guarantee is invoked, the legal representatives have to be brought on record to defend the action. The legal representative would mean the person who in law represents the estate of the deceased. This would obviously mean that if succession is intestate, all the legal heirs. If succession is testamentary, the beneficiaries under the will.

9. The petitioners are the grand-children of N.P.Garodia and the bank has not pleaded as to why the two would be the legal representatives of N.P.Garodia. The bald assertion that the bank has learnt that the estate of N.P.Garodia has been inherited by the petitioners is no ground to trouble the petitioners to suffer the trial. It was the duty of the bank to have made an assertion which was specific and prima-facie made good with some documents to show that the petitioners were the ones in law who had to represent the estate of the deceased.

10. The Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal have accordingly misdirected themselves. Further, both Forums have overlooked that N.P.Garodia was never impleaded as respondent in the original application. His son Arun Garodia was impleaded as respondent No.2 on the plea that he stood a personal guarantee and also represented the estate of his father. Both Forums had therefore to consider whether petitioners could be impleaded after 10 years of the original application being filed in the context of the two not being substituted as a legal heir of an existing respondent but being impleaded for the first time as the legal

representatives of the deceased guarantor, in light of the law of limitation for the reason a party impleaded in a suit would require it to be treated that qua the party concerned the suit was instituted on the day when the party was impleaded and the summons issued.

11. We allow the writ petition and quash the impugned order dated October 07, 2015. Allowing the appeal filed before the Debts Recovery Appellate Tribunal we set aside the order dated August 20, 2015 passed by the Debts Recovery Appellate Tribunal and allow IA No.523/2015 filed by the petitioners. Their names are deleted from the array of respondents in OA No.85/2004.

12. No costs.

CM No.28639/2015

Dismissed as infructuous.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**FEBRUARY 09, 2016**

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