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

+ CM(M) 270/2017

AMULYA KUMAR ROY (SINCE DECEASED) THR HIS LRS

..... Petitioner

Through: Mr. Rajeev Singh, Adv.

versus

GEETA ROY

..... Respondent

Through: Mr. Rahul Malhotra & Mr. Arpit
Durivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **30.11.2017**

The civil suit instituted by the predecessor-in-interest of the petitioners was at the stage of defendant's evidence when it came to light that he had died on 29.07.2015. Since the application for substitution under Order XXII Rule 3 of Civil Procedure Code (CPC) had not been moved, the Additional District Judge in *seisin* of the case ordered closure of the proceedings due to abatement. An application was moved on 24.11.2015 seeking setting aside of the abatement, which was resisted by the defendant, respondent herein, on the ground that the delay had not been properly explained. The learned Additional District Judge accepted the objections and dismissed the application by the impugned order dated 21.12.2016.

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In the opinion of this court, the view taken by the Additional District Judge is not correct. The delay had been sufficiently explained. One of the legal heirs had undergone surgical procedure on 28.07.2015 in which view the trial court should have taken a proper view. The counsel for respondent, at this stage, submits that he concedes to the prayer in the petition for setting aside of abatement of the suit.

The abatement of the suit is set aside. The proceedings in the civil suit are revived on the file of the Additional District Judge.

Amended memo of parties shall be taken on record before proceeding further.

The petition is disposed of in above terms.

Dasti.

R.K.GAUBA, J

NOVEMBER 30, 2017/umang