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

+ **CS(COMM) 665/2016**

DELL INC

..... Plaintiff

Through: Mr. Manish Dhir, Adv.

versus

NASAR AHMAD AND ANOTHER

..... Defendants

Through: Ms. Ronbila Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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06.12.2017

IA No.12216/2017 (of the plaintiff u/O XXII R-4 CPC for substitution of legal representatives of the deceased no.2) and IA No.12217/2017 (for condonation of 31 days delay in applying therefor).

1. The counsel for the defendant no.1 and the counsel for the proposed legal heirs have no objection.
2. Cause of action is found to survive.
3. The delay in applying for substitution is condoned and the legal heir of the defendant no.2 is substituted in place of the defendant no.2.
4. The applications are disposed of.

CS(COMM) 665/2016 & IA no.12215/2017 (under Order XXIII Rule 3 CPC).

4. Amended memo of parties filed along with IA No.12216/2017 aforesaid be taken on record.
5. The counsel for the plaintiff and the counsel for the defendant no.1 and the legal heir of defendant no.2 state that though the disputes subject matter of the suit were settled in IA no.12215/2017 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) filed by the plaintiff, the

defendant no.1 Amit Malhotra, and the then only legal heir of the defendant no.2, but subsequently it was realised that the defendant no.2 has left another legal heir namely Sarika Malhotra and a fresh application for substitution of Sarika Malhotra also as a legal heir of the defendant no.2 has been prepared.

6. On oral request, the aforesaid Sarika Malhotra, in addition to Amit Malhotra aforesaid, is substituted as legal heir of the defendant no.2 Roshan Lal Malhotra and the *Vakalatnama* of the aforesaid Sarika Malhotra in favour of the Advocate and the amended memo of parties handed over in the Court are taken on record.

7. The counsels have also handed over an application under Order XXIII Rule 3 of the CPC executed by the plaintiff, defendant no.1 and the aforesaid Amit Malhotra and Sarika Malhotra and which is taken on record and be got numbered.

8. The counsels state that the two applications are signed by the plaintiff, defendant no.1 and the respective two legal heirs of the defendant no.2 and are supported by their affidavits and they seek decree in terms of the said compromise applications.

9. The counsels on enquiry state that the application u/O XXIII Rule 3 of CPC filed today is identical to IA No.12215/2017.

10. I have perused the compromise arrived at between the parties and as contained in IA No.12215/2017 and the application filed today and find the same to be lawful save for Clause 3(i) where the defendant no.1 has agreed to, for violation of the terms of the compromise, pay liquidated damages to the tune of Rs.20,00,000/- to the plaintiff.

11. The counsel for the plaintiff clarifies that the said amount shall not be claimed in execution of the compromise decree sought but by way of filing a separate suit.

12. Subject to the aforesaid, the applications are allowed and a decree is passed in favour of the plaintiff and against the defendant no.1 and the legal heirs of the defendant no.2 in terms of the compromise application filed today which shall form part of the decree sheet.

13. The counsel for the plaintiff states that the cost of Rs.25,000/- has been received from the defendant no.1.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

DECEMBER 06, 2017

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