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

+ CM(M) No.951/2014

VARSHA RANI (SINCE DECEASED
THROUGH HER LEGAL HEIRS)

..... Petitioner

Through: Mr. N. Swaminathan and Mr. Azhar
Qayum, Advs.

versus

RAKESH MALIK

..... Respondent

Through: Mr. Rakesh Vatsa, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.09.2017

1. This petition under Article 227 of the Constitution of India impugns the order (dated 19th August, 2014 in CS No.109/14 of the Court of Additional District Judge-06 (South) District, New Delhi) allowing the application of the respondent / defendant under Section 10 of the Code of Civil Procedure, 1908 (CPC) and staying further proceedings in the suit filed by the petitioner / plaintiff for recovery of Rs.5,01,600/- from the respondent / defendant.
2. The suit from which this petition arises was instituted by Varsha Rani who is now no more and as per memo of parties of this petition, was substituted by her husband Som Nath Malik and son Kapil Malik. It is informed that Som Nath Malik also has since died.
3. The proceedings in the suit filed by the petitioner / plaintiff have been stayed under Section 10 of the CPC, till the decision in Suit No.14/2008 titled *Ashok Kumar Malik Vs. Malik & Company & Ors.* stated to be now pending in the Court of Shri Shailender Malik, Additional District Judge, Tis

Hazari Courts, Delhi.

4. The reason which prevailed in the impugned order for allowing the application under Section 10 of the CPC is, that the deceased plaintiff Varsha Rani had claimed the monies as sole proprietor of Malik & Company and in the suit aforesaid pending in the Tis Hazari Courts, the question of the constitution of Malik & Company was in issue.
5. The petition was entertained and notice thereof ordered to be issued.
6. The counsels have been heard.
7. The counsel for the petitioner / plaintiff has drawn attention to the issues framed in the suit from which this petition arises and the issues in the previously instituted suit on account whereof the proceedings in the subject suit have been stayed and has contended that there are no overlapping issues.
8. Though undoubtedly so, but the same is owing to defective issues having been framed. *Omnibus* issues as to the entitlement of the plaintiff in the suit to the reliefs claimed have been framed, without crystallising the matters which should guide the trial. However said defect in framing of issues does not take away from the fact that the constitution of Malik & Company, as sole proprietor whereof the deceased plaintiff Varsha Rani had claimed the monies, is in issue in the previously instituted suit.
9. The counsel for the respondent / defendant states that the respondent / defendant claims to be a partner of Malik & Company.
10. In the previously instituted suit, the relief of rendition of accounts of Malik & Company has been claimed.
11. I have enquired from the counsel for the respondent / defendant, whether the respondent / defendant otherwise admits the money as claimed

being due from him to Malik & Company.

12. The counsel for the respondent /defendant denies.

13. In the light thereof, I am of the opinion that instead of staying proceedings in the subject suit, it is more appropriate that the subject suit is transferred to the same Court before which the previously instituted suit is pending, leaving it open to the learned Additional District Judge to cure the issue/s and / or to tweak the manner in which evidence is to be recorded and to also consider whether the two suits need to be consolidated or tried separately, though by the same Court.

14. The petition succeeds to the aforesaid extent and the impugned order is set aside and the Suit No.109/2014 of the Court of Additional District Judge-06 (South) District, New Delhi is transferred to the Court of Shri Shailender Malik, Additional District Judge-03 (Central), Tis Hazari Courts, Delhi to be tried along with CS No.14/2008 (New No.115308/16) of that Court, informed to be listed next on 13th December, 2017.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 08, 2017

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