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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 898/2016 & CM No.33076/2016 (for stay)
KUSUM LATA SHARMA & ORS Petitioners

Through: Mr. Param Sharma, Adv.

Versus

JAI DEVI & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 16th August, 2016 in Civil Suit No.10038/2016 (Old Civil Suit No.34/2016) of the Court of Additional District Judge (ADJ)-03, Central District, Tis Hazari Courts, Delhi] of dismissal of the application filed by the petitioners / defendants under Order VII Rule 11 of the CPC.
2. The petition was entertained and notice thereof ordered to be issued.
3. On the next date i.e. 8th November, 2016, the counsel for the petitioners/defendants stated that she has learnt that the respondent no.1 had expired. Accordingly, the matter was adjourned to 17th March, 2017.
4. On 17th March, 2017, the matter was adjourned to today.
5. The counsel for the petitioners / defendants seeks time to take steps for substitution of the legal heirs of the respondent no.1.
6. The demise of respondent / defendant no.1 having been reported as far back as on 8th November, 2016 and the petitioners / defendants having not

taken any steps for substitution of legal heirs of the respondent no.1 / plaintiff, this petition has abated and the question of granting any adjournment does not arise.

7. On enquiry from the counsel for the petitioners / defendants, whether in the suit from which this petition arises, the heirs of the respondent no.1 / plaintiff have been substituted, the counsel states that one of the heirs has been substituted but some others are also claiming.

8. If one of the heirs of the respondent no.1 / plaintiff has already been substituted in the suit, the petitioners / defendants had knowledge of the same and ought to have taken steps in this petition for substitution.

9. I may also mention that the aforesaid is without prejudice to the fact that the remedy of Article 227 of the Constitution of India was misconceived as Revision Petition under Section 115 of the CPC lies against such an order.

10. Dismissed as abated.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 28, 2017

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