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

+ CM(M) 26/2017 and CM No. 909-11/2017

RAMRATI SINCE DECEASED THR LRS Petitioner

Through Mr. Sandeep Khatri and Mr.Narendra
Singh, Advocates.

versus

RAM NIWAS DAGAR Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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10.01.2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 02.09.2016 by which an application filed by the respondent under Order 22 Rule 4 CPC read with Section 5 of the Limitation Act to implead the LRs of deceased Smt. Ram Ratti was allowed.

2. Smt. Ram Ratti expired on 12.03.2015. The application was filed on 23.04.2016.

3. The trial court by the impugned order noted that there is considerable delay in filing of the application for impleadment of the LRs of the deceased defendant No.1 but also noted that the suit was pending before the High Court and was transferred by order dated 07.12.2015. Thereafter, the same was marked to the Predecessor Court on 19.02.2016 and was again transferred and marked to the present court. Considering the movement of the file in this manner, the trial court, in the interest of justice, condoned the

delay in filing of the application under Order 22 Rule 4 CPC and allowed the same.

4. Learned counsel for the petitioner has vehemently argued that the respondent has taken more than a year to move the present application. He relies upon the order dated 18.05.2015 of the Joint Registrar of this court where the suit was pending to point out that the knowledge of the death of defendant No. 1 had been received by the respondent on the said date of hearing.

5. A perusal of the order dated 18.05.2015 shows that the counsel did not appear when the matter was called but his presence was marked later on. In his application under Order 22 Rule 4 CPC, he has pointed out that he received the knowledge of the death of defendant No. 1 when on 04.04.2015, the counsel for the petitioner moved an application under Order 22 Rule 3 CPC to bring on record the LRs of the deceased defendant No.1 in a connected matter. The respondent received the knowledge about the death only in August 2015 when the copy of the said application was received on 06.08.2015. Thereafter, it is urged, on 07.12.2015, the matter was transferred from the High Court to the District Court.

6. The trial court has, in my opinion, exercised discretion and has come to a conclusion that there was sufficient cause for condonation of delay. There is no reason to hold to the contrary or to interfere with the impugned order.

7. In view of the above, the present petition is dismissed.

8. All pending applications also stand dismissed.

JANUARY 10, 2017/rb

JAYANT NATH, J