

\$~A-43

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

+ CM(M) 67/2017 and CM No. 2285/2017 (stay)

MOHD ADIL & ANR Petitioners

Through Mr.S.D.Ansari and Mr. I.Ahmed,
Advocates with petitioner No.1-in-person.

versus

YASHBIR SINGH (SINCE
DECEASED) THR AMIT S KATYAL Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
20.01.2017

%

1. The petitioners had filed an eviction petition against the respondent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 and an ex parte eviction order was passed on 10.07.2002. Thereafter the petitioners have also received the possession of the tenanted property.

2. In the meantime, it is stated that the tenant/respondent expired. Accordingly, the LRs of the deceased respondent have moved two application i.e. under Order 9 Rule 13 CPC read with Section 144 CPC and under Order 22 Rule 4 CPC. The ARC by his impugned order dated 09.09.2014 noted that the reports of the bailiff as well as the AD card forming part of the regenerated cover requires certain clarifications. Notices were issued to the concerned Bailiff as well as the Post Master, Nizamuddin

to clarify the respective reports

3. Against the said order dated 09.09.2014, the petitioners filed an appeal before the Rent Controller Tribunal. The Tribunal also dismissed the appeal by impugned order dated 08.11.2016.

4. Learned counsel appearing for the petitioners submits that though he cannot object to the summoning of the Post Master and the concerned Bailiff, however, he submits that the right to sue does not survive in favour of the so called LRs of the deceased respondent/tenant. He submits that instead of deciding the objection of the petitioners, namely, that the right to sue does not survive in favour of the so called LRs of the deceased respondent, the ARC has gone head and started adjudicating the applications filed under Order 9 Rule 13 CPC and Order 22 Rule 4 CPC respectively by summoning the concerned officials.

5. It is clear from the impugned orders that this issue has not been dealt with by the ARC.

6. Accordingly, leave and liberty is granted to the petitioner to approach the ARC with an appropriate application seeking that the issue as to whether the right to sue survive or not may be adjudicated upon first. In case such an application is filed by the petitioners, the trial court may adjudicate the same before proceeding with the matter further.

7. With the above observations, the present petition and all pending applications also stand disposed of.

JAYANT NATH, J

JANUARY 20, 2017

rb