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

+ CM(M) No.1011/2017 & CM No.33599/2017 (for stay).

ASHOK KUMAR

..... Petitioner

Through: Mr. Anuj Kapoor with Ms. Kirti  
Kapoor, Advs.

versus

KAMLA DEVI (DECEASED)

THROUGH LEGAL HEIRS & ORS

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **15.09.2017**

**CM No.33600/2017 (for exemption).**

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

**CM(M) No.1011/2017 & CM No.33599/2017 (for stay).**

3. This petition under Article 227 of the Constitution of India impugns the order (dated 1<sup>st</sup> May, 2017 in MCA No.2027/2016 of the Court of Additional District Judge-02, South District, Saket Court Complex, New Delhi) allowing the appeal preferred by the respondent no.1, being the legal heirs of the deceased plaintiff, under Order XLIII Rule 1(c) of the Code of Civil Procedure, 1908 (CPC) against the order (dated 25<sup>th</sup> January, 2011 in Suit No.1080/11/06 of the Court of Civil Judge-07 (Central), Delhi) dismissing the application of the respondent no.1, Legal Representatives (LRs) of the deceased plaintiff, under Order IX Rule 9 of the CPC and allowing the application under Order IX Rule 9 of the CPC and restoring the suit to its original position.

4. The deceased respondent no.1 / plaintiff had instituted the suit to set

*CM(M) No.1011/2017*

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side the sale by the respondent / defendant no.2, being the nephew and Power of Attorney holder of the deceased plaintiff, in favour of the petitioner / defendant no.1 of the property. The respondent no.1 / plaintiff died during the pendency of the suit and the application for substitution of her legal heirs was pending since 2004. The suit was transferred from one Court to another and the transferee Court issued court notice to the deceased plaintiff and on non-appearance of the deceased plaintiff dismissed the suit in default.

5. In the aforesaid facts, the learned Additional District Judge has found a case for restoration of the suit to its original position having been made out and has, in a detailed order, given cogent reasons for the same and with which I agree.

6. The counsel for the petitioner / defendant no.1 has argued that the legal heirs of the deceased plaintiff were appearing in the suit.

7. In my view that makes the impugned order stronger and goes further against the petitioner / defendant no.1; if the legal heirs of the deceased plaintiff had been appearing but the court notice was not issued to them, then it was all the more a reason for allowing the application under Order IX Rule 9 of the CPC.

8. Even otherwise, no case for interfering with the discretion exercised by the First Appellate Court in such matters is made out.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**SEPTEMBER 15, 2017**

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