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

+ W.P.(C) 11390/2017 and CM APPL. 46492-94/2017

UNION OF INDIA AND ANR. Petitioners

Through: Mr.Nikhil Bhardwaj, Advocate for
Mr. Arun Bhardwaj, CGSC

versus

DR. B N MITTAL Respondent

Through: Ms. Tamali Wad with Mr. Prince
Anthony, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **20.12.2017**

1. The present petition has been filed by the petitioner against a dead man, Dr. B.N. Mittal, without impleading his legal heirs, who were duly impleaded before the Tribunal in O.A. No.2339/2004, upon his demise on 28.07.2014.

2. On the first call, Ms. Tamali Wad, Advocate had entered appearance on behalf of the legal heirs of late Dr.B.N. Mittal to point out the above position and had submitted that she has appeared in the case on seeing the same listed in the cause list, though she is not on caveat. She further stated that aggrieved by the impugned order dated 02.07.2017 passed by the Tribunal, her clients had filed a Review Application in March 2017, on which notice was issued on 24.03.2017, returnable on 24.05.2017. Thereafter, appearance was entered on behalf of the petitioners in the said

application and adjournments had been sought by them before the Tribunal on a couple of occasions, to file a reply. Instead, they have proceeded to file present petition, without awaiting the orders on the Review Application filed by the legal heirs of the deceased respondent, which is next listed before the Tribunal on 15.02.2018.

3. At that stage, learned counsel for the petitioners had sought a pass over to enable him to obtain necessary instructions.

4. In the post lunch session, learned counsel for the petitioners seeks to explain that the petitioners decided not to await a decision on the Review Application filed by the respondents for the reason that they had already delayed filing the present petition and were advised that if the review application is ultimately rejected then it would result in further delay in approaching this Court, for relief, without any valid justification. He states that due to bonafide inadvertence, the petitioners have impleaded the deceased respondent, who had expired in the year 2014, instead of impleading him through his legal heirs.

5. Further, it is submitted on instructions that since the Review Application filed by the legal heirs of the deceased respondent is listed before the Tribunal on 15.02.2018, instead of pressing the present petition at this stage, liberty may be given to the petitioners to withdraw the same while reserving their right to file a fresh petition thereafter, which will take care of their anxiety that in the event, the respondents succeed in their Review Application, all the other grounds that may be available to them in law and facts to assail the impugned judgment as also the orders that may be passed by the Tribunal on the Review Application, can be taken up at one go in the subsequent petition.

6. In view of the aforesaid submission, the present petition is disposed of with liberty granted to the petitioners to file a fresh petition based on the same cause of action, after disposal of the Review Application filed by the legal heirs of the deceased respondent and pending before the Tribunal. To ensure that the Review Application is disposed of expeditiously, the petitioners are directed to file their reply without any further delay, so that the matter can be taken up for hearing by Tribunal on the date fixed, i.e., on 15.02.2018

7. The petition is disposed of alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

DECEMBER 20, 2017

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