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

+ CM(M) 21/2004

RAJ KUMAR & ORS. Petitioners

Through: Mr. R.D. Sharma, Adv.

versus

GOPI RAM Respondent

Through: Mr. Devendra Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **11.04.2018**

Munni Devi, wife of Balram Singh, one of the legal representatives of original respondent Gopi Ram has died on 10.07.2017 and in that context an application has been moved under Order 22 Rule 4 of the Code of Civil Procedure, 1908, the prayer made at the hearing being that all other legal representatives of Munni Devi are already on record and only the factum of her death need be noted. The factum of death having been brought on record, the applications CM No. 14071 and 14074 of 2018 are disposed of.

In the context of main petition – CM (M) 21/2004 – it needs to be noted here that the original petitioner Hari Kishan claiming himself to be the owner-cum-landlord of the subject premises described as bearing no. T-85, Sarai Kale Khan, New Delhi -110013 had instituted a case for eviction against Gopi Ram (since deceased and substituted by the legal representatives) on the ground under Section 14 (1) (h) of Delhi Rent

Control Act, 1958. The said petition was contested by Gopi Ram, *inter alia*, on the grounds that he was not a tenant in the subject premises under Hari Kishan, the land beneath the suit structure vesting in Delhi Development Authority (DDA), it being a *jhuggi*. Gopi Ram had, thus, questioned the claim of the petitioner of he being the owner-cum-landlord of the subject premises. During the pendency of the said case before the Additional Rent Controller Hari Kishan died. The case was prosecuted to the stage of conclusion by his legal representatives, his son Raj Kumar having been examined as a witness (PW-1), reliance also being placed on the evidence of Dharam Pal (PW-2). On the other hand, the respondent Gopi Ram examined himself (as RW-1), also placed reliance on the testimony of witness Nanak Chand (RW-2).

The Additional Rent Controller dismissed the eviction petition, by judgment dated 29.07.2000, *inter alia*, holding that the petitioner Hari Kishan (since deceased through his legal representatives) had failed to prove that he was not owner of the subject premises or that there is a relationship between the landlord and tenant. The petitioner challenged the said judgment by appeal (RCA 578/2000) which came up before Additional Rent Control Tribunal for consideration. The appeal was dismissed by judgement 21.11.2003 whereby the findings of the Additional Rent Controller were affirmed. It is the said decision which was challenged by the petition at hand.

At the hearing, the counsel representing the petitioner submitted that in another eviction case on the ground of non-payment of rent under Section 14 (1) (a) of Delhi Rent Control Act, 1958, also taken out by the same

petitioner against the same respondent in respect of the same premises, findings affirming the case of the petitioner about landlord and tenant relationship have been returned, and though appeal challenging the said decision has been filed, the petitioners herein do not wish to prosecute the case for an order of eviction on the ground under Section 14 (1) (h) Delhi Rent Control Act, 1958 and, thus, seek to withdraw the petition reserving their rights to seek appropriate relief by independent proceedings on fresh cause of action.

The petition is dismissed as withdrawn.

R.K.GAUBA, J

APRIL 11, 2018

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