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

+ CM(M) 211/2017 & CM No. 6989/2017

JAI BHAGWAN JAIN (DECEASED) THR HIS LRS Petitioners

Through: Mr. Raghubir Singh Rana, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Mr. Kush Sharma & Mr. Ekant
Luthra, Advocates for DDA.

Ms. Mini Pushkarna, Standing
Counsel for NDMC/R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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28.02.2018

The civil suit to which the present petition relates was initially filed in 2008 on the original side of this Court, it having been registered as CS(OS) No. 2447/2008 - by Jai Bhagwan (predecessor-in-interest of the petitioner herein) joining hands as co-plaintiff with third and fourth respondents, the suit being against the first and second respondents i.e. Delhi Development Authority (DDA) and Municipal Corporation of Delhi (MCD), now represented by North Delhi Municipal Corporation, the prayer being for decree of declaration and confirmation of possession in respect of the subject property.

The first plaintiff Jai Bhagwan, the predecessor-in-interest of the petitioner, had died on 13.10.2011. The suit itself came to be

dismissed for non-prosecution on 08.08.2013. Subsequently, on account of change of non-pecuniary jurisdiction, the matter came up before the Court of Additional District Judge in the context of application for restoration under Order 9 Rule 9 of the Code of Civil Procedure, 1908 (CPC) submitted by the third and fourth respondents (other plaintiffs) and the petitioners, they claiming to be legal heirs of the deceased first plaintiff Jai Bhagwan on the averments, *inter alia*, that the cause of action in their favour has survived. The Additional District Judge allowed the restoration by order dated 12.08.2016 but restricted it to restoration of the case at the instance of the third and fourth respondents.

The petitioners, thereafter, moved an application under Order 22 Rule 3 CPC with an application under Section 151 CPC on 22.09.2016 but the same were declined by order dated 15.11.2016 which is impugned by the petition at hand.

Having heard the learned counsel on both sides and having gone through the record, this Court is of the view that the neglect in diligent prosecution of the interest of the petitioners by the counsel in the wake of the death of Jai Bhagwan on 13.10.2011 is writ large on the record of the case. The previous counsel had submitted an application under Order 22 Rule 3 CPC on 23.07.2012 against diary no. 118239 dated 23.07.2012. Though the said move was also belated, an application had been initiated which could have been pursued to the logical end. The filing of the said application was noted in the proceedings of the Joint Registrar on 25.07.2012 when the matter was

still pending on the original side of this Court. The fact that such application had been filed was confirmed by the Deputy Registrar (Original) by his communication dated 28.12.2016 to the new counsel engaged by the petitioners (copy Annexure A10). Alongwith the said document, the said original application under Order 22 Rule 3 CPC prepared by the previous counsel, it being supported by affidavit of Mr. Daulat Ram, the third respondent (co-plaintiff), sworn on 23.07.2012 was also submitted. It appears the registry had raised certain objections which required to be removed before the said application could be listed. The previous counsel took no such steps and let the matter go under utter neglect leading to the above noted adverse orders being passed.

In the above facts and circumstances, in the opinion of this Court, the petitioners should not suffer on account of neglect on the part of their counsel, they having filed a complaint against him with Bar Council of Delhi which, this Court hopes, would take appropriate action thereupon in accordance with law.

Thus, the impugned orders are set aside. The petitioners stand substituted as legal representatives of the deceased first plaintiff Jai Bhagwan and brought on record in his place, entitled to prosecute the case, with other plaintiffs, to the logical end.

The petition and the pending application are disposed of in above terms.

FEBRUARY 28, 2018/uj
CM(M) 211/2017

R.K.GAUBA, J.