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

+ **O.M.P. 433/2005**

L. S. BHALLA

..... Petitioner

Through: Mr. Shyam Agarwal, Advocate.
(M:9810062835)

versus

USHA DATTA & ORS

..... Respondents

Through: Mr. Arun Francis, Advocate for R-5
& 6. (M:9810548558)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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14.09.2018

I.A. 8376/2018 (for restoration)

1. Prayer for restoration is allowed, for the reasons stated in the applicaiton.

O.M.P. 433/2005

2. On 25th May, 2018 the present petition was dismissed for non-prosecution. I.A. 8376/2018 was then filed seeking restoration of the petition.

3. It is submitted by learned counsel for Plaintiff that the interim order dated 25th November, 2005 was in operation when the petition was dismissed. Under these circumstances, this Court had, on the last date, directed that the order dated 16th December, 2005 shall operate till the next date. Today, learned counsel for Defendant Nos.5 & 6 has put in appearance and he submits that the order dated 16th December, 2005 was modified subsequently on 4th October, 2010, on which date also the petition was dismissed for non-prosecution. Order dated 4th October, 2010 is set out

herein below:

*“There was no appearance on behalf of petitioner on previous two occasions i.e. 12th May, 2010 and 22nd September, 2010. Today the matter was passed over but none appeared for the petitioner. Even on the second call there is no appearance on behalf of the petitioner. In these circumstances, the petition is dismissed for non-prosecution. Mr. Arun Mohan, Sr. Advocate, instructed by Mr. Ashval Vadera, says that he appears for objector/applicant who had deposited the key in respect of the lock of the suit property. For this purpose he draws my attention to order dated 16th December, 2005 and 09th January, 2006. The report of the Registry dated 02.01.2006 indicates that the key of the suit premises was deposited by Mr. Ankur Singhal, Advocate. The key shall be returned to the Advocate concerned. The Registry shall do the needful in that regard. Interim orders are vacated.
.....”*

4. He further submits that the LR's of Late Mr. L. S. Bhalla, who are Petitioners in the present petition, have filed a suit on the same issue, being CS(OS) 257/2017, which is pending before this Court. The present petitioner under Section 9 has thus become infructuous as the parties have already sought their civil remedies. In the said suit, the interim application was dismissed as not pressed with liberty to file fresh one, if so advised. He further submits that the present petition deserves to be disposed of. Learned counsel for the Petitioners, however, submits that the *status quo* order, which was passed would get vacated as a result of the dismissal.

5. The Petitioner herein has already passed away. His LR's have also availed of their legal remedies by filing a civil suit. Thus the present petition under Section 9 is no longer maintainable and is in fact infructuous.

However, in order to secure the interest of the parties concerned, the *status quo* order, which was passed on 16th December, 2005 deserves to be continued for a short period. Insofar as the keys of the rooms on the first floor of the suit property are concerned, the same were deposited with the Registrar General of this Court but pursuant to the order dated 4th October, 2010 the keys have been returned to the Defendants. Thus, only the status quo order dated 16th December, 2005 shall operate for a further period of two weeks during which period the Petitioner (herein)/ Plaintiffs in CS (OS) 257/2017 are permitted to approach the appropriate Court for interim orders, if so advised.

6. Petition is disposed of accordingly.

PRATHIBA M. SINGH, J.

SEPTEMBER 14, 2018/dk