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

+ **RFA(OS)(COMM) 11/2016**

KRISHAN KUMAR WADHVA Appellant
Through Mr. Rajender Agarwal, Advocate.

versus

DELHI DEVELOPMENT AUTHORITY & ANR. Respondents
Through Mr. S.R. Sharma, Advocate for
respondent No. 1-DDA.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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17.01.2018

Krishan Kumar Wadhva preferred this appeal on 27th October, 2016 impugning judgment and order dated 9th August, 2016 passed by the single Judge holding that the suit does not disclose any cause of action or right to challenge perpetual lease deed dated 11th July, 1974 for industrial plot bearing No. 71/5 measuring 7246.67 square yards, Najafgarh Road Industrial Area, Najafgarh in favour of M/s Delhi Flooring Private Limited. Impugned judgment records that the appellant (i.e., plaintiff) had claimed that he was a tenant and would be estopped from challenging the title of the landlord. Further, the lease was granted in favour of M/s Delhi Flooring Private Limited for a period of 25 years by the Delhi Development Authority. The lease was not renewed. Several other facets were noticed. The suit was accordingly held to be misconceived and dismissed.

2. Krishan Kumar Wadhva did not file court fees payable on a Regular First Appeal.
3. Order dated 23rd May, 2017 refers to application CM No. 45150/2016 under Section 149 read with Order XXXIII and Section 151 of the Code of Civil Procedure, 1908 (Code, for short) by which Krishan Kumar Wadhva had sought extension of time for filing of court fees for a period of one month to meet the ends of justice. This application is dated 8th September, 2016 and was attested by Krishan Kumar Wadhva on 5th October, 2016. Thus, we would take that Krishan Kumar Wadhva was granted one month's time to file court fees with effect from 5th December, 2016.
4. Court fee was not paid. The order dated 23rd May, 2017 records that court fees had not been paid and further time of fifteen days was granted to the appellant-Krishan Kumar Wadhva to pay the same. In spite of the extension, court fee was not paid.
5. On 20th June, 2017, Krishan Kumar Wadhva expired.
6. Order passed on 18th September, 2017 records that Krishan Kumar Wadhva has expired and an application for bringing on record legal representatives of Krishan Kumar Wadhva had been filed, but not listed. Counsel for the respondents was asked to obtain instructions.
7. By application CM No. 1782/2018, Samir Wadhva son of Krishan Kumar Wadhva wants to be impleaded and substituted for the appellant. As there was delay in removing office objection, an application CM No. 1783/2018 has also been preferred.
8. Court fees, however, as directed even now has not been paid. The appeal, as noticed above, was filed in October, 2016 and more than fifteen months have gone by, but neither Krishan Kumar Wadhva nor the present

applicant, who wants to be substituted in his place, has paid the court fees. In these circumstances, we are not inclined to extend and grant further time under Section 149 of the Code. It will be, however, open to the applicant to file court fees and if and when the court fees is filed, this appeal would be listed. Samir Wadhva will have to move an application for condonation of delay. The appeal for the time being will be treated as disposed of as the appeal has not been validly filed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JANUARY 17, 2018
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