

\$~6

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

+ CM(M) 18/2016 and CM APPL.938/2016 (stay)

MADANLAL SURYAWANSHI Petitioner

Through: Petitioner in person.

versus

TARA DEVI Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **12.02.2018**

The respondent had instituted a civil suit (Suit No.212/2010) under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) against the petitioner seeking recovery of Rs.2,45,050/-, the claim arising out of a friendly loan of Rs.1,45,000/- statedly extended by the respondent (the plaintiff) to the petitioner (the defendant) against a receipt. When the suit was filed, the defendant was in judicial custody in some criminal cases. There is no dispute as to the fact that he was duly served and had due knowledge of the pendency of the civil suit, his son as his representative even having attended the hearing at some stage, a request for legal aid and assistance having also been made in this context, though with no follow up action. Eventually, the suit was decreed by the civil judge by judgement dated 25.05.2011. The defendant was released from custody on 23.12.2011 and moved an application invoking provision contained in Order IX Rule

13 CPC praying for the said *ex parte* judgment to be set aside. The civil judge considered the said application (M. No.34/2012) and treated it as an application under Order XXXVII Rule 4 CPC. By the impugned order dated 18.09.2015, he noted above background facts and the negligence on the part of the defendant and yet granted the relief by reviving the proceedings setting aside the *ex parte* judgment dated 25.05.2011, conditional upon the defendant depositing the amount of Rs.75,000/- in the form of fixed deposit receipt in the Court. It is the said direction which is under challenge through the petition at hand.

The defendant has been prosecuting the petition in person, declining to avail the services of any advocate. It came on record that the plaintiff of the case had died on 25.03.2016. No steps have been taken by the petitioner to have the respondent substituted by her legal heirs. On being asked, the petitioner submits that the factum of death of the plaintiff of the case has also come to the notice of the trial Court and there has been no move by her legal heirs to have themselves brought on record.

Whilst in the absence of appropriate steps in terms of Order XXII CPC, the petitioner cannot take these proceedings further, the impugned order even otherwise is not found to be suffering from any error. The learned trial judge took a very fair view of the matter by not only granting relief to the defendant by reviving the proceedings in the suit setting aside the *ex parte* judgment, but also protected the interest of the plaintiff of the case by requiring deposit of about half of the principal sum claimed in the suit.

In the above facts and circumstances, no case for interference by this Court at this stage is made out.

The petition is disposed of with clarification that the defendant may prosecute his interest before the trial Court including by raising issue of abatement of the proceedings in the suit, if a case for such request is made out.

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

R.K.GAUBA, J.

FEBRUARY 12, 2018

vk