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

Date of Decision: 10th December, 2019

+ **CM(M) 1763/2019**

RAKESH KUMAR NANDA (DECEASED) THR LR..... Petitioner

Through: Mr. Vishwendra Verma, Advocate.
(M:9871704611)

versus

JITENDER SINGH

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

CM APPL. 53070/2019(Exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM(M) 1763/2019 & CM APPL. 53069/2019

2. The petitioner challenges the impugned order dated 28th September, 2019 passed by the Id. Trial Court in the execution petition. The Id. counsel for the petitioner submits that the legal representative of the deceased late Mr. Rakesh Kumar Nanda i.e, his wife Ms. Lovely Nanda has been impleaded without ascertaining the liability of the widow. It is submitted by Mr. Vishwendra Verma, Id. counsel that before any attachment orders can be issued, or even proceeding further, the executing Court has to ascertain under Section 50 CPC as to the extent to which the legal representative is liable in respect of the property of the deceased. It is submitted that the deceased had already paid back loan under redemption deed which had also been executed.

3. Section 50 CPC reads as under:

“ 50. Legal representative.

(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”

In ***Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Ors. (1993)2SCC507*** at para 10 the Supreme Court observed as under:

“10. In The Official Liquidator v. Parthasarathi Sinha and Ors.[1983]2SCR211, this Court considered whether the legal representative would be bound by the liability for misfeasance proceeding against the deceased, While considering that question under Section 50 CPC this Court held that the legal representative, of course, would not be liable for any sum beyond the value of the estate of the deceased in his hands.

4. Thus, as per the above decision, the LRs liability would not be absolute and would be governed by Section 50 CPC. The impugned order merely impleads the legal representatives. In execution proceedings, the executing Court, before proceeding to issue any orders of attachment or otherwise shall first ascertain as to whether the legal representative is liable

in respect of the transaction in issue and also satisfy itself as to the liability of the legal representative under Section 50 (2) of the CPC.

5. With these observations the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 10, 2019

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