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

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Judgment delivered on: 29.08.2019

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C.R.P. 63/2019 & CM APPL.Nos. 10746/2019 & 10748/2019

SUKH LAL (DECEASED) THR LR

..... Petitioner

versus

JAGDISH PRASAD & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Jesica Jacob, Adv

For the Respondent : Ms.Ruchika Mittal, DHCLSC for R-1

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 20.10.2018 whereby the application under Order 9 Rule 4 CPC filed by the respondent/plaintiff was allowed and the Suit restored.

2. Respondent/plaintiff had filed the subject Suit during the pendency of which the predecessor of the petitioner as well as the respondent Nos.2 to 6 passed away. Since legal heirs were not brought on record, the Court held that the Suit had abated.

3. An application under Order 22 Rule 9 CPC was filed by the Respondents seeking setting aside of the abatement. There was no appearance on behalf of the plaintiff on 13.10.2011 when the Court

noticing the absence dismissed the suit in default.

4. Subject application under Order 9 Rule 4 CPC was filed which was allowed by the impugned order. Petitioner is aggrieved by the said order.

5. Perusal of the record shows that subject application under Order 9 Rule 4 CPC was filed on the very same day when the suit was dismissed in default. The application is supported by an affidavit of the advocate of the plaintiff. The ground taken is that the counsel for the plaintiff was out of station and a colleague was briefed to appear in the matter, however, he was busy in another Court and could not appear when the matter was called out.

6. The Trial Court has held that the application discloses sufficient cause for non appearance. Accordingly, the application has been allowed and the suit has been restored.

7. I am of the view that there is no infirmity in the order of the Trial Court in as much as the application seeking restoration was filed on the very same day when the suit was dismissed in default and is also supported by the affidavit of the counsel. The Trial Court has rightly found that the application shows sufficient cause for non appearance.

8. I find no merit in the petition. The petition is accordingly dismissed. There shall be no orders as to costs.

AUGUST 29, 2019
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SANJEEV SACHDEVA, J