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

+ CM(M) 407/2018

LATE SHYAM CHAUDHARY (DECEASED) THR LRS

..... Petitioners

Through : Mr.Barun Kumar Sinha and  
Ms.Pratibha Sinha, Advocates.

versus

DIN COOPERATIVE GROUP HOUSING  
SOCIETY PVT LTD & ANR

..... Respondents

Through : Mr.A.S.Kulshrestha and Mr. Lalit  
Kumar, Advocates for R1.

**CORAM:**

**HON'BLE MR. JUSTICE YOGESH KHANNA**

**ORDER**

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**16.05.2019**

The learned counsel for the petitioner says the petitioner is not claiming any relief in this petition against respondents No.2, 2(a) and 2(b) and that only relief he claims is against respondent No.1.

In the circumstances, service upon respondents No.2, 2(a) and 2(b) is not necessary and the petition is now taken up for hearing.

This petition impugns the order dated 06.07.2017 which dismissed the application of petitioners under Order XXII Rule 3 CPC as well as under Section 5 of the Limitation Act for condonation of delay of 121 days in filing the application under Order XXII Rule 3 CPC. The reason given in the application was they could not file the application in time since could not get the death certificate of deceased petitioner. The said applications were dismissed by the learned Trial Court. A review application was moved by the petitioner alleging yet another ground viz widow of petitioner is blind

and his two married daughters, one being settled in London and another in Darjeeling and when both these daughters came to meet the widow, it was only then they could move an application under Order XXII Rule 3 CPC.

Considering the circumstances in which the petitioners were placed viz, petitioner No.1 being blind and both married daughters being stationed out of Delhi, the impugned order dated 06.07.2017 passed by the learned Trial Court is set aside and petitioners are brought on record in place of deceased plaintiff. The amended memo of parties be filed before the learned Trial Court/ Successor Court. This order is made subject to costs of Rs.10,000/- to be paid to the learned counsel for respondent No.1, to which, the learned counsel for has appreciably prayed this costs be deposited with the *Odisha Relief Fund*. Ordered accordingly.

Parties are directed to appear before the learned Trial Court/ Successor Court on 24.05.2019 for further directions. The costs receipts be furnished by the petitioner within four weeks from today to the learned Trial Court/Successor Court.

The petition stands disposed of in above terms.

Copy of order be communicated to the learned Trial Court/ Successor Court forthwith for information.

**YOGESH KHANNA, J.**

**MAY 16, 2019**

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