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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 1157/2017

ANUPAM DIDWANIA

..... Petitioner

Through : Mr.Prateek Chaudhary, Advocate.

versus

NEERJA GUPTA & ORS

..... Respondent

Through : Mr.Girish Aggarwal, Ms.Salita
Devra, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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23.05.2019

This petition challenges the orders dated 02.06.2016 passed by the learned ARC. The appeal against the said order before the RCT was also dismissed vide order dated 07.11.2016.

It is submitted by the learned counsel for the petitioner earlier an eviction petition *E-249/2012* was filed under Section 14(1)(e) of the DRC Act by the respondent against his dead father. An application under Order I Rule 10 CPC read with Order XXII Rule 4 CPC was filed stating inter alia the petition is not maintainable against a dead person and the petitioner even gave list of legal heirs and asked for their impleadment as parties though they all, except the petitioner, were in different parts of the world. The said application was not decided but the petition was dismissed as it was against a dead person.

Later again yet another eviction petition *E-266/2014* was filed

against the mother of the petitioner and her grandson namely Mr.Nitin. Again an application under Order *I* Rule *10* CPC was filed by the petitioner herein disclosing he being the son of late Sh.Ram Gopal Didwania has to be impleaded as a party and the right to sue survives in his favour too. The learned ARC dismissed the said application on 02.06.2016 wrongly saying he is not residing in the subject premises, which in fact is commercial in nature and that petitioner has allegedly surrendered his tenancy rights, whereas no proof of the same is on record. Nevertheless, the mother of the petitioner Smt.Basanti Devi also expired on 13.01.2016 and the petitioner moved application under Order *XXII* Rule *4* CPC stating interalia, he being the legal heir of late Smt.Basanti Devi be impleaded as a party. The said application was also dismissed by the learned ARC on similar grounds as of the dismissal of the application under Order *I* Rule *10* CPC on 02.06.2016. An appeal against this was also dismissed on similar grounds and that since Mr.Nitin was already on record there was no need to allow the application under Order *XXII* Rule *4* CPC which observation is also factually incorrect.

At the first instance the application under Order *I* Rule *10* CPC ought to have been allowed but the said order is not challenged before me. However surely enough when application under Order *XXII* Rule *4* CPC was filed by the petitioner claiming he is a legal heir of late Smt.Basanti Devi, the same ought to have been allowed, though for delay some cost could have been imposed.

In the circumstances, the petition stands allowed subject to a cost of ₹ 10,000/- to be paid to the learned counsel for the

respondent. The amended memo of parties be filed by the respondent before the learned Trial Court. Since the proceedings are going on between the parties from the year 2012 it would be appropriate the matter be decided by the learned ARC within a year from 01.07.2019.

In view of above the petition stands disposed of. Pending application, if any, also stands disposed of.

Order *dasti*.

YOGESH KHANNA, J.

MAY 23, 2019

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