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

+ **CM(M) 4/2020 & CM APPL. 101/2020**

JANKI & ORS

..... Petitioners

Through: Mr. Braj Kishore Roy & Ms.
Priyanka Upadhaya, Advocates (M-
9990350445)

versus

SRI NIWAS VERMA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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03.03.2020

The present petition challenges the impugned order dated 8th January, 2018 by which the application under Order XXII Rule 4 read with Section 151 CPC was allowed by the Trial Court, and the legal heirs of the deceased Defendant i.e. Late Mr. Sumit Kumar were impleaded in the matter. The contention of ld. counsel for the Petitioners is that the legal heirs' application was filed belatedly and there was no application for condonation of delay. The Defendant expired on 2nd May 2017 but the application was moved on behalf of the Plaintiff for impleading the legal heirs on 5th September, 2017.

The second ground urged is that the application was never served upon the Defendants and hence the same was wrongly allowed, and the suit ought to have been treated as abated. A perusal of the order dated 8th January, 2018 handed over today, shows that the ld. counsel appearing for the LRs of the deceased Defendant had duly filed the memo of appearance

and no reply had in fact been filed to the impleadment application. Thus, the application was clearly served upon the counsel. In an application for impleadment of legal heirs, once the Court has exercised discretion, unless it is found to be completely incorrect or erroneous, the same ought not to be interfered with. In any event, the evidence in the matter is also stated to be concluded and the case is at the stage of final arguments. The suit being one for permanent injunction and partition amongst family members, this Court does not deem it appropriate to interfere with the present order.

It is submitted that the Defendants be given an opportunity to lead evidence. The said prayer is beyond the scope of the present petition. The Defendants are however permitted to make their submissions at the time of final arguments before the Trial Court.

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

PRATHIBA M. SINGH, J

MARCH 03, 2020

Rahul