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

+ **CM(M) 645/2019 & CM APPL. 19442/2019**

NIRMALA GOGIA

..... Petitioner

Through: Mr. L.S. Solanki & Ms. Anu Solanki,
Advocates (M-9891597843)

versus

SONU KUMAR BAWA & ANR

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **29.01.2020**

1. An eviction petition was filed by Plaintiff/Respondent - Mr. Sonu Kumar Bawa (*hereinafter 'Landlord'*) against the Petitioner's predecessors – Mr. Kishori Lal and Mr. Mukesh Gogia (*hereinafter 'Tenants'*). The Tenants passed away on 14th February, 2016 and 31st December, 2016 respectively and information in respect of the demise of Mr. Mukesh Gogia was given to the counsel for the Landlord by filing an application under Order XXII Rule 10A CPC. A notice was issued on 23rd February, 2016 informing of Mr. Kishori Lal's demise. The petition stood abated by operation of law on 16th May, 2017, since no application for impleadment of LR's was filed.

2. A consolidated application seeking setting aside the abatement, impleadment of LR's of Mr. Mukesh Gogia as well as condonation of delay was however moved in December, 2017. In the said application the landlord claimed that he was in a dire financial condition and accordingly could not pay his counsel's fee and thus could not file the application for impleadment.

3. The Trial Court considered the said application and has allowed the same and has also condoned the delay. The Petitioner – Ms. Nirmala Gogia has been accordingly substituted in the place of Mr. Mukesh Gogia.

4. The submission of Id. counsel for the Petitioner is that the non-payment of fee to the counsel cannot be a ground for delay of more than 300 days. He relies on a judgment in ***Banwari Lal (D) by LRs & Anr. v. Balbir Singh 2016 (1) SCC 607***. Sufficient cause was not shown and hence the setting aside of the abatement is contrary to law.

5. This Court is exercising jurisdiction under Article 227 of the Constitution of India. A perusal of the impugned order would show that the Trial Court has arrived at its satisfaction on the reasons given in the application to set aside the abatement. Moreover, in an eviction petition, if the same is held to be abated, the owner/landlord may lose his rights to evict the tenant itself, which is a very drastic consequence for non-impleadment of legal heirs. In such cases, unless there is malafides and the delay is completely inexplicable, the Court ought to exercise discretion in favour of the landlord.

6. Accordingly, this Court does not deem it appropriate to interfere with the impugned order. The petition is dismissed. However, considering the delay entailed in the filing of application for impleadment of legal heirs, costs of Rs.10,000/- shall be paid by the Landlord to the Petitioner within a period of six weeks. Copy of this order be communicated to the Court of Mr. Shirish Aggarwal, ARC-1/Central, Delhi.

7. Order *dasti*.

PRATHIBA M. SINGH, J.

JANUARY 29, 2020

Rahul