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

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Judgment delivered on: 20.04.2023

+ CM(M) 630/2023

BIMLA KAPOOR & ORS.

..... Petitioner

versus

SANGITA BHUTANI & ANR.

.... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vidit Gupta and Mr. Chetan Singh, Advs.

For the Respondent : Mr. Ankit Singh and Mr. Danish Ali, Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 19597/2023

1. Exemption is allowed, subject to all just exceptions
2. The application stands disposed of.

CM APPL. 19598/2023

3. This is an application seeking exemption from filing entire Trial Court record.
4. This court does not require the same as of now, accordingly the application stands allowed.
5. Application stands disposed of.

CM(M) 630/2023 & CM APPL. 19596/2023

6. The petitioner challenges the order dated 04.03.2023 in CS No.

328/2021 titled as “*Sangita Bhutani and Anr. Vs. Surender Kapoor*” whereby the application under Order 1 Rule 10 r/w Section 151 of CPC, 1908 filed on behalf of respondent/plaintiff was allowed.

7. Learned counsel appearing for the petitioner submits that the suit admittedly was filed against the sole deceased/defendant late Sh. Surender Kapoor, who was their father.

8. Accordingly, Mr. Singh, learned counsel for respondent submits that the suit against a dead person is not maintainable.

9. Learned counsel submits that by way of an application under Order 1 Rule 10 of CPC, 1908, the defect could not have been cured and the LR's of the said deceased/defendant could not have been impleaded or substituted as an independent defendant since the suit filed against a dead person itself is not maintainable and is a nullity in law.

10. On the aforesaid basis, learned counsel submits that the impugned order, as such, is unsustainable in law and ought to be set aside.

11. *Per contra*, learned counsel appearing for the respondent/plaintiff submits that the factum of the death of the sole defendant was revealed to the respondent after having filed the suit and it was on that basis that the application under Order 1 Rule 10 of CPC, 1908 was filed seeking permission of the court to implead the petitioner as defendant to the said suit.

12. Learned counsel appearing for the respective parties have filed judgments in their favour.

13. After some arguments, learned counsel for the respondent/plaintiff submits that the respondent/plaintiff be permitted to file a fresh suit arraying the LR's of the sole deceased defendant as

parties to such suit.

14. In view of the submissions of learned counsel appearing for the respondent/plaintiff, this court deems it fit as also in the facts and the circumstances of the case and keeping in view the fact that the suit was filed for the eviction and recovery of the possession of the subject suit premises, to permit the respondent/plaintiff to withdraw the present suit with liberty to file a properly constituted suit in accordance with law.

15. Petition is disposed of in view of the above terms, with no order as to costs.

TUSHAR RAO GEDELA, J

APRIL 20, 2023/AT



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