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

Date of decision: 29.11.2023

+ **CM(M) 1959/2023**

NARINDER ARORA (DECEASED) THROUGH LEGAL HEIRS

..... Petitioner

Through: Mr. Mayank Wadhwa, Mr. Shorya
Goel and Ms. Muskan Gupta, Advs.

versus

MUNICIPAL CORPORATION OF DELHI Respondent

Through: Mr. Arjun Mahajan, Standing
Counsel with Mr. Apoorv Upmanyu
and Ms. Neha Rai, Advs.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 61342/2023

1. Exemptions allowed, subject to all just exceptions.
2. Accordingly, the application stands disposed of.

CM APPL. 61343/2023

3. For the reasons stated in the application, the delay of 15 days in re-filing this petition is condoned.
4. Accordingly, the application stands disposed of.

CM(M) 1959/2023

5. This petition filed under Article 227 of Constitution of India impugns the order dated 16.09.2022 passed by the Presiding Officer, Appellate Tribunal, MCD ('ATMCD' or 'Tribunal') in Appeal No. 599/2013, titled as '**Narinder Arora (Deceased) through Legal Heirs v. SDMC**', whereby



the application filed by the legal heirs of deceased Appellant i.e., Mr. Narinder Arora, under Order XXII Rule 3 of Code of Civil Procedure, 1908 ('CPC') as well as the appeal itself was dismissed by the ATMCD for non-prosecution.

2. Learned Counsel for the Petitioner states that it is a matter of record that Appeal No. 599/2013 was filed by Late Mr. Narinder Arora impugning the sealing order alleged to have been issued by the Respondent herein i.e., Municipal Corporation of Delhi ('MCD'). He states that however, during the pendency of the Appeal, Mr. Narinder Arora passed away on 11.02.2021.

2.1 He states that late Mr. Narinder Arora was survived by his wife, two sons and one daughter namely:

- a. Mrs. Charita Arora (wife)
- b. Mr. Manav Arora (Son)
- c. Mrs. Mansi Arora (Daughter)
- d. Mr. Nakshay Arora (Son)

2.2 He states that the legal heirs filed an application under Order XXII Rule 3 CPC through Mr. Nakshay Arora, who was duly authorised by the remaining legal heirs to file the application. He states that the application was duly supported by the affidavit of Mr. Nakshay Arora.

3. Learned Counsel for the MCD has entered appearance on advance service and he states that the impugned order was passed in view of the non-filing of the affidavits of all the legal heirs, as directed vide order dated 10.06.2022.

4. This Court has considered the submission of the parties and perused the record.

5. It appears from the record that all the legal heirs of Late Mr. Narinder



Arora had since shifted to Canada and, in those circumstances, all of them collectively appointed Mr. Nakshay Arora as their General Power of Attorney ('GPA') holder to defend the Appeal pending before the Tribunal.

6. In view of the aforesaid, Mr. Nakshay Arora, for and on behalf of all the legal heirs filed an application under Order XXII Rule 3 of the CPC on 10.09.2021. The said application was duly signed by Mr. Nakshay Arora and was also supported by his sworn affidavit.

7. The ATMCD, however, vide order dated 10.06.2022 directed that each of the legal representatives of the deceased Appellant must file their affidavit in support of this application.

8. Since, the aforesaid direction was not complied with, the ATMCD vide impugned order 16.09.2022 dismissed the application on account of non-filing of the affidavits of the remaining legal representatives and consequently, dismissed the appeal for non-prosecution.

9. This Court has perused the GPA dated 19.04.2021 more specifically clause 4 & 5 therein, executed by all the legal representatives of Mr. Narinder Arora in favour of Mr. Nakshay Arora.

10. Ms. Mansi Arora i.e., the daughter of late Mr. Narinder Arora executed a separate GPA dated 13.07.2021 in favour of Mr. Nakshay Arora. In this GPA as well, as per clause 9, Mr. Nakshay Arora was duly authorised to pursue appeal on her behalf.

11. In the opinion of this Court, in view of the GPA(s) dated 13.07.2021 and 19.04.2021, the application filed by Mr. Nakshay Arora under Order XXII Rule 3 of CPC for and on behalf of the other legal heirs of late Mr. Narinder Arora, was maintainable.

12. In this regard, it could be relevant to refer to Order VI Rule 15 of



CPC, which specifically provides that where there is more than one party instituting the suit, the pleading can be verified by one of the said parties and the affidavit can be filed by the said party.

13. In the opinion of this Court, the Application filed under Order XXII Rule 3 of the CPC is in conformity with the provisions of Order VI Rule 15 CPC and, therefore, the impugned order is liable to be set aside.

14. Accordingly, the Application filed by the Appellants under Order XXII Rule 3 CPC is allowed, the legal heirs of late Mr. Narinder Arora are taken on record and the appeal is restored to its original number.

15. The Parties are directed to appear before the ATMCD on 15.12.2023. The Petitioner is directed to file an appropriate application along with this order before ATMCD in A No. 599/2013 within one (1) week.

16. With the aforesaid, the present petition stands disposed of. Pending applications, if any, stand disposed of.

17. The registry is directed to send a copy of this order to the tribunal expeditiously for compliance of listing on 15.12.2023.

18. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA
(JUDGE)

NOVEMBER 29, 2023/aks