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

Date of decision: 20.12.2023

+ **CM(M) 29/2020**

RAMESH CHAND VERMA (SINCE DECEASED) THR HIS LRS

..... Petitioner

Through: Mr Ajay Verma and Mr Vaishnav
Kirti Singh, Advocates

versus

SAROJ DEVI JAIN (SINCE DECEASED) THR LRS

..... Respondent

Through: Mr D.K. Mishra, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 19.10.2019 passed by ARC-1, Central, Tis Hazari Courts, Delhi ('Executing Court') in Execution Petition No. 24/2016, **New No. 98658/2016** titled as **Smt. Saroj Devi Jain since deceased through LR's. vs. Shri Ramesh Chand Verma since deceased through LR's.**

1.1 The Executing Court vide order dated 19.10.2019 dismissed an application filed by the legal representative of the deceased Judgment Debtor under Order XXII Rule 4 Code of Civil Procedure, 1908 ('CPC') on the ground of delay.

1.2 The Executing Court by the same impugned order also dismissed the application filed by the deceased Judgment Debtor under Order IX Rule 13 CPC read with Section 5 of the Limitation Act, 1963 and Section 144 of CPC as abated.

1.3 The Respondents i.e., the landlord filed an eviction petition



no.997/2014 for recovery of the two (2) shops bearing part of property No. 2521 & 2522, Ward No.11, Near Jain Naya Mandir, Dharampura, Dariba Kalan, Chandni Chowk, Delhi ('tenanted premises') under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act').

1.4 The Executing Court after recording that the tenant has been duly served and has failed to enter appearance and/or file an application for leave to defend proceeded to pass the eviction order dated 12.01.2016. Thereafter, in execution proceedings in pursuance to the issuance of warrants of possession, the possession of the tenanted premises was recovered by the landlord on 17.05.2017.

1.5 It is at this stage that the deceased Judgment Debtor approached the Executing Court on 26.05.2017 by filing an application under Order IX Rule 13 CPC and Section 144 CPC.

1.6 The Judgment Debtor passed away on 30.11.2018. His legal heirs, however filed an application under Order XXII Rule 4 CPC belatedly on 19.10.2019, which has been dismissed by the Executing Court on the ground of delay. The Executing Court has also dismissed the application filed by the deceased Judgment Debtor under Order IX Rule 13 CPC.

2. This petition has been filed by the legal heirs of the deceased Judgment Debtor. It is the stand of the Petitioners that since the tenanted premises were lying locked, even though the service of the summons were duly affected, the deceased Judgment Debtor did not have any notice of the said summons and therefore, was unable to participate in the proceedings for eviction before the Rent Controller.

3. The Petitioners herein do not dispute that the service was affected at the tenanted premises in the ordinary course as well as subsequently by



publication under Order V Rule 20 CPC.

4. The Respondent states that post execution and recovery of possession the landlord occupied the tenanted premises and started using it. He states that during the pendency of these proceedings both the landlord and the tenant have passed away. It is stated that the order dated 19.10.2019 granted permission to the legal heirs of the deceased tenant i.e., Judgment Debtor to remove the two (2) iron almirahs from the tenanted premises, which liberty has been exercised by the legal heirs and thus the order has been implemented. It is contended that the present petition is not being seriously pursued and is kept pending for oblique reasons.

5. This Court has considered the submissions of the counsel for the Petitioners and perused the record.

6. In the facts of this case, there is no dispute that due service was affected on the deceased Judgment Debtor firstly at the tenanted premises through ordinary process and additionally by publication. However, the tenant failed to file an application for leave to defend despite service. In these circumstances, the Rent Controller rightly allowed the eviction petition on 12.01.2016 as per the mandate of Section 25-B (4) of the DRC Act. This Court finds that *ex-facie* there was no error in the eviction order passed by the Executing Court on 12.01.2016.

7. In these facts, where the eviction order stood executed on 26.05.2017, the delay by the legal heirs of the deceased tenant of over one (1) year in filing the application under Order XXII Rule 4 CPC was significant. The Judgment Debtor i.e., tenant died on 30.11.2018 and the application for bringing on record legal heirs was filed belatedly on 19.10.2019. The explanation offered by the legal heirs for the delay is unpersuasive and has



been rightly rejected by the Executing Court.

8. It has also come on record that the legal heirs of the Judgment Debtor i.e., the Petitioners herein acting in furtherance of the liberty granted under the impugned order dated 19.10.2019 have collected the iron almirahs from the tenanted premises. Therefore, the impugned order has been implemented between the parties.

9. In these proceedings as well, the Petitioners have not been diligent in appearing in the matter.

10. Thus, keeping in view over all conspectus of the facts i.e., (i) the Judgment Debtor i.e., the tenant had stopped using the tenanted premises during his lifetime and was lying locked; (ii) the possession of the tenanted premises stands recovered on 26.05.2017 and is being used by the legal heirs of the deceased landlord; (iii) both the landlord and the tenant have passed away; (iv) the issue in 2023 is now stale and no compelling reasons for granting restitution as prayed for by the Judgment Debtor are made out.

11. This Court therefore, finds no error in the order of the Executing Court, while declining the condonation of delay in filing the application under the Order XXII Rule 4 CPC and dismissing the application for restitution filed under Order IX Rule 13 CPC as abated.

12. Accordingly, the present petition is dismissed.

13. Pending application(s) stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 20, 2023/rk/sk

[Click here to check corrigendum, if any](#)