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

Date of decision: 26.09.2023

+ CM(M) 1135/2018 & CM APPLs. 38632/2018, 56055/2022

JASWANT SINGH BASETIA

..... Petitioner

Through: Mr. Sunil Aggarwal, Advocate

versus

UMESH CHAUDHARY & ORS

..... Respondent

Through: Mr. Mohit Gupta and Ms. Aayushi Jain, Advocates for R-1
Mr. N.P. Singh and Mr. Vikalp Mishra, Advocates for Defendant No.3

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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):

1. This order is being passed in continuation of the order dated 20.09.2023 passed by this Court.
2. Mr. Mohit Gupta, learned counsel for Respondent Nos. 1 states that he has examined the judgment of *Mithailal Dalsangar Singh and Ors. Vs. Annabai Devram Kini and Ors., (2003) 10 SCC 691* and concedes that the ratio of the said judgment is applicable and no separate application for setting aside abatement is mandatory. He states that in fact another judgment of *PankajBhai RameshBhai Zalavadia v. Jetha Bhai KalaBhai Zalavadia (Deceased) through LR's & Ors (2017) 9 SCC 700* also supports the



contention of the Petitioner herein.

2.1. He states that in view of the said judgments he fairly concedes that the legal representatives of deceased defendant no.3 and defendant no.4 may be impleaded and taken on record.

2.2. He states that however, this is without prejudice to the application filed by defendant no.1 i.e., Respondent No.1 under Order 7 Rule 11 of Code of Civil Procedure, 1908 ('CPC') which is pending for consideration before the Trial Court.

2.3. He states that defendant no.2 is untraceable, therefore, plaintiff would be required to be served in accordance with the Order 5 of CPC. He states that legal representatives of defendant no. 4 have not been appearing in this petition and fresh steps shall have to be taken by the plaintiff to serve them in the suit proceedings.

3. The learned counsel for Respondent No. 3 states that he adopts the submissions of learned counsel for Respondent No.1.

4. In reply, learned counsel for the Petitioner states that he has no objection to the submissions made by the counsel for the Respondent. He states that plaintiff will take appropriate steps to serve defendant no.2 through publication, if necessary and take fresh steps for the issuance of summons to the legal representatives of defendant no.4 before the Trial Court.

5. Accordingly, in view of the aforesaid submissions of the parties, the impugned order dated 13.11.2017 is set aside with the consent of the parties and the application filed by the Petitioner herein for bringing on record the legal representatives of deceased defendant no.3 and defendant no.4 is allowed.

6. The Petitioner is directed to file an amended memo of parties before



the Trial Court within a period of two (2) weeks and take appropriate steps for service of summons on defendant no.2 and newly impleaded legal representatives of defendant no.4 in accordance with law.

7. The Petitioner will be at liberty to rely upon the record of this Court for seeking any direction from the Trial Court for service on defendant no.2 and legal representatives of defendant no.4 by way of publication. However, the directions will be passed by the Trial Court after examining the record in and accordance with law.

8. The learned Trial Court is further requested to take up and hear the application filed by defendant no.1 under Order 7 Rule 11 CPC without awaiting the completion of service on defendant no.2 and/or legal representatives of defendant no. 4, since the said application is a matter between defendant no.1 and the plaintiff alone.

9. With the aforesaid directions, present petition stands allowed.

10. The parties are directed to appear on the next date of hearing fixed before the Trial Court i.e., 06.10.2023.

11. Pending applications, if any, stands are disposed of. Interim orders, if any, stand vacated.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 26, 2023/msh/ms

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