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

% *Decided on: 06th February, 2023*

+ **RFA 39/2014 & CM APPL. 24508/2022**

MS ANJU SINGH Appellant

Through: None.
versus

SMT PUNAM Respondent

Through: Ms. Santwana Agarwal, Ms.
Saumya Agarwal, Advocates
(M:9811970721)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

CM APPL. 24508/2022 (u/Order XXII Rule 3(2) read with Section 151 CPC)

1. The present application has been filed on behalf of the respondent under Order XXII Rule 3(2) read with Section 151 CPC for abatement of case and discharge of the Bank Guarantee.
2. The appellant had challenged the impugned judgment and decree dated 02.08.2013 passed by the Ld. District Judge, Distt. Shahdara, Karkardooma Court, Delhi, whereby the summary suit filed by the respondent has been decreed against the appellant. In the present appeal, the High Court had stayed the execution of the decree, vide order dated 29.01.2014, subject to deposit of the decretal amount along with interest and costs by the appellant.

3. It is submitted that pursuant thereto, the appellant herein had deposited the decretal amount. Thus, the respondent moved an application being CM APPL. No. 12406/2014 praying for directions to release the decretal amount as deposited by the appellant.

4. Vide order dated 12.08.2014, this Court directed the release of the said amount in favour of the respondent subject to furnishing of security. Pursuant thereto, the respondent furnished the Bank Guarantee bearing No. 4408ILG001215 dated 07.03.2015 issued by Punjab National Bank, Mayur Vihar Phase-11, Delhi-110091. The said Bank Guarantee was duly accepted by this Court and the decretal amount as deposited by the appellant before this Court was released in favour of the respondent. It is submitted that the said Bank Guarantee has been renewed from time to time and that the same is valid up to 18.02.2023.

5. It is the case on behalf of the respondent that an early hearing application was filed in another matter pending between the parties being Crl.Rev.P. No. 213/2018, which was also pending before this Court. Therein, the respondent came to know that the appellant herein had already expired on 17.05.2021. Thereafter, respondent filed an application for abatement of the said case against the appellant. It is submitted that this Court vide order dated 18.04.2022 abated the said case being Crl.Rev.P. No. 213/2018, which order has been duly attached with the present application. Thus, it is prayed that the present appeal may also be abated.

6. Perusal of the order sheets show that notice in the present application was issued on 24.05.2022. Thereafter the matter was listed

before the Registrar on 03.08.2022 for bringing on record the LR's of the deceased appellant.

7. In the order dated 03.08.2022, it is recorded that the respondent was able to obtain the details of one of the LR's of the deceased appellant. Thus, it was directed that on furnishing the details of the LR's of the deceased appellant and steps being taken within one week, notice of the application may be issued to the LR's of the deceased appellant. The matter was next listed for hearing on 11.10.2022. In the order dated 11.10.2022, it is recorded that the notice had been served upon the Mr. Yuvraj Singh, the sole Legal Representative of deceased appellant as well as counsel who was earlier appearing for the appellant. However, despite service, there was no appearance on behalf of the counsel for appellant or the LR of the deceased appellant. Thus, the court had directed for issuance of the court notice to Mr. Yuvraj Singh, sole Legal Representative of deceased appellant and counsel for the deceased appellant. The matter was thereafter listed for hearing on 08.12.2022.

8. In the order dated 08.12.2022, it is noted that notice issued to Mr. Yuvraj Singh, the sole legal representative of the deceased appellant had been received back un-served with the remarks that the premises had been found locked. Thus, fresh court notice was issued to the counsel for the deceased appellant as well as Mr. Yuvraj Singh, the sole legal representative of the deceased appellant. The matter was thereafter fixed for hearing on 20.01.2023. On 20.01.2023, Mr. Yogesh Swaroop, Mr. Kapil Kishore Kaushik and Mr. Manoj, Advocates, appeared on behalf of the deceased appellant through

video conferencing. Statement on behalf of the counsels for the appellant was recorded in the order dated 20.01.2023 that they would move an application for bringing on record the proposed LR of the deceased appellant. Thus, by order dated 20.01.2023, the Registrar of this Court had granted liberty to the counsel for the deceased appellant to move an appropriate application for bringing on record the proposed LRs of deceased appellant, subject to costs of Rs. 5,000/- (Rupees Five thousand). The matter was thereafter listed for hearing on 02.02.2023.

9. When the matter was listed for hearing on 02.02.2023, a statement was made on behalf of Mr. Yogesh Swaroop, Advocate for the deceased appellant that he had not received any instructions from the proposed LRs of the deceased appellant and that no attorney had been issued in his favour by the proposed LRs. Thus, he submitted that he is not appearing for the proposed LRs. Hence, the matter has come to be listed before this Court.

10. There is no appearance on behalf of the LRs of the deceased appellant when the matter is listed today.

11. Ms. Santwana Agarwal, Advocate appearing on behalf of the respondent prays that since no steps have been taken to bring on record the Legal Representatives/Legal Heirs of the deceased appellant and none has appeared on behalf of the Legal Representatives/Legal Heirs of the deceased appellant, no fruitful purpose would be served in continuing with the present application.

12. Considering the submissions made before this Court and the aforesaid narrative, wherein despite opportunity no steps have been

taken to bring on record the LR's of deceased appellant, it is directed that the present appeal stands abated.

13. In view of the aforesaid, the Bank Guarantee bearing No. 4408ILG001215 dated 07.03.2015 issued by Punjab National Bank, Mayur Vihar Phase-11, Delhi-110091, which is valid up to 18.02.2023 is discharged.

14. The present appeal is disposed of along with pending applications in terms of the aforesaid directions.

MINI PUSHKARNA, J

FEBRUARY 06, 2023

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