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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 43/2023 & CM APPL. 6959/2023**
SHEETAL & ANR.Petitioners

Through: Mr. Uddhav Pratap and Mr. Y.P.
Sharma, Advocates

versus

HOTEL ZODIAC PVT. LTD THROUGH ITS
DIRECTOR SH SOHAN LAL GUPTA & ANR.Respondents

Through: Mr. Ajay Gupta, Advocate for R-1
Mr. Ujjwal Goel, Advocate for R-2

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

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19.07.2024

1. The present revision petition is filed under section 25-B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the “**DRC Act**”) to impugn the order dated 27.08.2022 passed by the court of Ms. Dhanashree Deka, ARC-02, Central, Tis Hazari Courts, Delhi vide which an application for leave to defend filed by the original tenant was dismissed, as a consequence of which, an eviction order was passed in respect of the tenanted premises.

2. The respondent no. 1 is claiming to be the owner/landlord of the tenanted premises i.e. one shop situated at Ground Floor in the property bearing Municipal No. 7A/5, situated at WEA, Karol Bagh, New Delhi (hereinafter referred to as the “**tenanted premises**”). The respondent no. 1 filed an eviction petition on the ground of *bona fide* requirement as per section 14(1)(e) read with section 25B of the DRC Act against the original



tenant Ashok Kumar.

3. The original tenant Ashok Kumar stated to be expired on 27.08.2020, as a result of which, the respondent no. 1 filed an application under Order XXII Rule 4 CPC for substitution of legal heirs of the original tenant, Ashok Kumar which are, Sushila w/o late Ashok Kumar and Kamal Kumar s/o late Ashok Kumar. An another application under section 151 CPC was also filed by the Advocate who was representing the original tenant Ashok Kumar wherein it is informed that besides two legal heirs i.e. Sheetal and Poonam, who are the daughters of late Ashok Kumar are also the surviving legal heirs of original tenant Ashok Kumar.

4. The counsel for the petitioners stated that the impugned order dated 27.08.2022 was passed without the substitution of legal heirs of original tenant Ashok Kumar and it was passed against a dead person as such, it is *void ab initio* and was not passed in accordance with law. In these circumstances, the counsel for the petitioners stated that the impugned order dated 27.08.2022 being passed against a dead person is liable to be set aside.

5. Mr. Ajay Gupta, Advocate for the respondent no. 1 stated that although the application under Order XXII Rule 4 CPC was filed on behalf of the respondent no. 1 on 03.10.2020 but the trial court without disposing of the said application, decided the application for grant of leave to defend vide impugned order dated 27.08.2022.

6. It is apparent that the impugned order dated 27.08.2022 was passed against a dead person i.e. without substituting the surviving legal heirs of the original tenant Ashok Kumar.

7. Hence, the impugned order dated 27.08.2022 cannot be sustained under law and is accordingly set aside.



8. The trial court is directed to first decide the application under Order XXII Rule 4 CPC dated 03.10.2020 already filed on behalf of the respondent no. 1 and thereafter, to decide the application for grant of leave to defend in accordance with law. It is expected that the trial court shall decide the application for grant of leave to defend as early as possible.

9. The present application along with pending application, stands disposed of.

DR. SUDHIR KUMAR JAIN, J

JULY 19, 2024

N/ABK