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

+ C.R.P. 288/2023 & CM APPL. 52441/2023

LATE RAMCHANDER (DECEASED) THROUGH HIS LEGAL
HEIRS

.....Petitioner

Through: Mr. Shashank Dixit & Mr. Tanuj
Bhadana, Advocates.

versus

RAJENDER KUMAR BANSAL & ORS.

.....Respondents

Through: Mr. Ayush Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

03.10.2024

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1. The present Revision Petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the Petitioner-Revisionist seeking to set aside the Order dated 05.08.2023 passed in CS DJ No. 1015/2019 *vide* which the Application under Order XXII Rule 3 of CPC, 1908 filed by the legal heirs of the deceased plaintiff-Ramchander seeking impleadment on the demise of the plaintiff-Ramchander, has been dismissed.
2. It is submitted that though admittedly the Application under Order XXII Rule 3 of CPC, 1908 was neither signed nor supported by the affidavits of the Applicants, who are the legal heirs of the deceased plaintiff-Ramchander, however, their relationship is evident from the copy of the Will annexed along with the Application under Order XXII Rule 3 of CPC, 1908.
3. Learned counsel for the petitioner-revisionist herein has fairly



conceded that the Application under Order XXII Rule 3 of CPC, 1908 so filed was defective inasmuch as, it was filed beyond the period of 90 days and has not supported by any Application seeking condonation of delay in filing the same.

4. Therefore, a prayer is made that the opportunity may be given to the petitioner-revisionist to move an appropriate application for setting aside the abatement/condonation of delay along with the Application under Order XXII Rule 3 of CPC, 1908.

5. **Learned counsel for the respondents-defendants** has vehemently opposed the present Revision Petition on the grounds that the Application which was purported to be under Order XXII Rule 3 of CPC, 1908 was neither signed nor supported with the affidavits of the applicants/legal heirs of the deceased plaintiff-Ramchander.

6. He further contests the Revision Petition on the ground that the said Application under Order XXII Rule 3 of CPC, 1908 states that the Applicants are the natural legal heirs of the deceased plaintiff-Ramchander, but the same does not specify the relationship of the applicants/legal heirs of the deceased plaintiff-Ramchander.

7. Learned counsel for the respondents-defendants further argues that no ground for exercise of revisional jurisdiction under Section 115 of the CPC, 1908, is made out.

8. It is submitted that the Suit already stands abated since no Application for substitution was filed within 90 days. The Suit having abated, the Application under Order XXII Rule 3 of CPC, 1908 was not maintainable and has been rightly rejected by the learned Additional District Judge *vide* impugned Order dated 05.08.2023.



9. **Submissions heard.**

10. Admittedly, the Application under Order XXII Rule 3 of CPC, 1908 filed by the legal heirs of the deceased plaintiff-Ramchander had been filed in a haste in order to be within the limitation, but was filed beyond 90 days from the date of demise of the deceased plaintiff-Ramchander; nor was it was not signed nor was it supported with the affidavits of the Applicants/Legal Heirs; was not supported with any Application under Order XXII Rule 9 of CPC, 1908 seeking to set aside the abatement and was also not supported with an Application seeking condonation of delay in moving the said Application to set aside the abatement.

11. However, the procedural law cannot be permitted to defeat the substantive rights of the parties.

12. In view of above, the present Revision Petition is allowed and the impugned Order dated 05.08.2023 is set aside, with liberty to the Petitioner-Revisionist to file the appropriate Applications within 30 days before the learned Trial Court, failing which the Suit shall stand abated.

13. Accordingly, the present Petition along with pending Application is disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 3, 2024
S.Sharma