



\$~47

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 326/2024 & CM APPL. 65106/2024 & CM APPL. 65107/2024

SHRI KAPIL CHAUHAN AND ANRPetitioners
Through: Mr. Ajay Gupta, Advocate.

versus

SHRI SOM NATH AASHTARespondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER
07.11.2024

%

1. Petition under Section 115 *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed against the Order dated 02.08.2024 *vide* which the Application under Order VII Rule 11 CPC filed on behalf of the Revisionist/legal-heirs of the Defendant, has been dismissed.
2. *Briefly stated*, Respondent/Plaintiff had filed a *Suit for recovery* against the Defendant Late Sh. Bharat Bhushan Chauhan who died during the pendency of the Suit. The Respondent/Plaintiff moved an Application under Order 22 Rule 4 CPC which was allowed and the Revisionists have been impleaded as legal heirs of deceased Defendant.
3. Thereafter, an Application under Order VII Rule 11 of CPC was filed on behalf of the Petitioner/ Lrs. of the deceased Defendant wherein it was submitted that there is *no privity of contract* between



the parties and the Suit is hit by Section 6 of the *Hindu Succession Act, 1956* ('HSA , 1956' *hereinafter*) which provides that no Court shall recognize any right to proceed against son, grandson or great grandson for recovery of any debt due from the father, grandfather or great-grandfather under the Hindu Law.

4. The learned Trial Court *vide* impugned Order observed that there was no merit in the Application since similar objections have been taken on behalf of the legal heirs of the Defendant at the time of impleadment, which has been dismissed *vide* speaking Order. The Application was held to be nothing but a delay tactic. The Application being found frivolous was dismissed with the cost of Rs.5000/- *vide* Order dated 02.08.2024.

5. Aggrieved by the Order, the present Revision Petition has been filed.

6. **Submissions Heard.**

7. Admittedly a Suit for Recovery of Rs. 9,62,986/- along with interest has been filed by the Plaintiff/Respondent against the Defendant.

8. During the pendency of the Suit, Defendant died and an Application under Order 22 Rule 4 CPC was filed for substitution which had been contested by the Revisionists on the same ground that there was no right to sue against the legal heirs and they were not liable to be impleaded in place of deceased Defendant. However, this contention was specifically overruled in the Order dated 30.03.2017 *vide* which the Revisionists had been impleaded. No challenge whatsoever has been made to the said Order.



9. Instead, the present Application under Order VII Rule 11 CPC has been filed on the same ground that the Petitioners are not liable to satisfy the debts of the deceased father in terms of Section 6(4) of HSA, 1956. However, the Revisionists have failed to comprehend that there are two stages in any litigation; *first* is the determination of the liability and, only thereafter the *second stage* of recovery from the legal heirs of deceased Defendant arises.

10. The impleadment in the Suit is only to facilitate and enable the Revisionists to be able to prove the defence of the deceased Defendant in order to rebut the claims of the Plaintiff. It is only when the Suit is decided and the liability is held to be that of the Defendant that the question of recovery from the legal heirs of the Defendant would arise. It is at that stage that the Revisionists may agitate that they are not liable to satisfy the outstanding liability of the deceased Defendant on the ground of them not having inherited any amount/estate from the deceased father.

11. Pertinently, same argument was taken under Order XXII Rule 4 CPC which was rejected and no challenge to the Order, was made. The learned Trial Court has rightly dismissed the Application under Order VII Rule 11 CPC by observing that it is nothing but a delay tactic.

12. There is no infirmity in the impugned Order of the learned Trial Court. The Revision Petition is hereby, dismissed.

NEENA BANSAL KRISHNA, J

NOVEMBER 7, 2024/rk