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

+ **RC.REV. 107/2018**

M/S SURINDER SINGH RAMPAL & ANR Petitioners
Through: Shri Gurmehar Singh Sistani, Adv.

versus

VIKARAM SHARMA Respondent
Through: Mr S.S. Jain and Mr Sandeep Jain,
Adv.
Ms. Pratima N. Lakra, CGSC with
Mr. Chandan Prajapati, Advocate for
Applicant in CM APPL. 26224/2024

CORAM:
HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

03.05.2024

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[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 26244/2024 (U/O I Rule 10 CPC)

1. This application has been filed on behalf of Custodian of Enemy Property for India seeking to be impleaded as a party in these proceedings. After part submissions, learned counsel for applicant seeks passover to examine the legal position further and take instructions from the applicant.

2. Be awaited.

By the time further arguments are heard and dictation of this order is concluded, learned counsel for applicant has received instructions from her clients. Accordingly, on instructions of her clients, learned counsel for the applicant seeks permission to withdraw this application. As such, the application is dismissed as withdrawn.

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CM APPL. 53513/2023 (vacation of stay) & CM APPL. 10957/2018 (stay)

3. Learned counsel for petitioners on being called upon to address arguments on these applications submits that since petitioner no. 2 has passed away and legal representatives of petitioner no. 2 are not in touch with him, he cannot address arguments. It is submitted by learned counsel for petitioners that petitioner no. 2 passed away on 29.11.2022 but neither any application under Order XXII Rule 3 CPC nor any intimation under Order XXII Rule 10A CPC (*which is the duty cast on the counsel by law*) was filed by learned counsel for petitioners. Even on last date, learned counsel for petitioners took time to seek discharge as a counsel for petitioners and stated that he was not aware about date of death of petitioner no. 2. But as mentioned above, no such application seeking discharge has been filed by counsel for petitioners. Under these circumstances, refusal on the part of counsel for petitioners to address arguments on vacation of stay does not appear justified.

4. Further it is submitted by the learned counsel for petitioners that petitioner no. 2 passed away but petitioner no.1 is a partnership firm, of which one Mugeem Qureshi was a partner. But as pointed by learned counsel for respondent, the affidavit supporting the present petition was signed by the petitioner no. 2 as a proprietor of M/s Surinder Singh Rampal and not as partner. Even the affidavit seeking leave to contest was sworn by the petitioner no. 2 as a proprietor of the said concern.

5. Further, it is disclosed by learned counsel for respondent that even the

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said Muqem Qureshi filed objections before the Executing Court, which objections were dismissed but the said order was never challenged.

6. According to the respondent, the interim protection was obtained by the petitioners from this court by concealing material facts and by mis-statement about correct facts.

7. Learned counsel for respondent also discloses that the objections before the Execution Court were filed on behalf of Muqem Qureshi by a counsel from same chamber of the trial court counsel for the tenant and in the objections, the allegation was that the tenant had colluded with the landlord.

8. Learned counsel for respondent also submits that till date, learned counsel for the present petitioners has not even disclosed as to when and from whom he came to know about death of petitioner no. 2, so conduct of learned counsel is also brought in question by him. Learned counsel for petitioners clarifies that the intimation about death of petitioner no. 2 was conveyed to him by Shri Muqem Qureshi sometime in March 2024 and prior to that he was not aware about the same.

9. It also raises curiosity as to how the Custodian of Enemy Property came to know about pendency of this case.

10. The above circumstances clearly reflect that petitioners have not come before the court truthfully. Therefore, the stay on operation of the impugned eviction order is vacated granting liberty to the respondent/landlord to institute appropriate legal proceedings for execution of the impugned eviction order and for recovery of use and occupation

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charges for the period from the date of stay on operation of the impugned order till this day.

11. Accordingly, CM APPL. 10957/2018 is dismissed and CM APPL. 53513/2023 is allowed.

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12. I find myself in agreement with learned counsel for respondent that since today it has been disclosed by learned counsel for petitioners that petitioner no. 2 passed away on 29.11.2022 and till date he has not been substituted with his legal representatives and the petitioner no. 1 is not a partnership firm but proprietorship concern even according to the leave to contest affidavit and the affidavit supporting this petition, the present petition has abated. Accordingly, the petition is dismissed as abated.

GIRISH KATHPALIA, J

MAY 3, 2024/as

Click here to check corrigendum, if any

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