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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 16th April, 2025***

+ CM(M) 443/2025 & CM APPL. 19868/2025
PRIME CARE HOSPITAL LTD. & ANR.

.....Petitioner

Through: Mr. Sourabh Gupta, Mr. Akshansh Gupta and Mr. Vasu Dev, Advocates.

versus

KAMLA DEVI DECEASED & ORS.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM(M) 443/2025 & CM APPL. 19867/2025 (seeking early hearing)

1. Petitioner has filed a suit, which seeks recovery.
2. When the abovesaid suit was taken up by the learned Trial Court on 13.11.2024, noticing that the steps had not been taken for serving the LR's of deceased defendant No.1, one more opportunity was granted to the plaintiff, *albeit*, subject to cost of Rs.10,000/- to be deposited with Lawyer's Welfare Fund, Dwarka District Court.
3. Thereafter, when the matter was taken up by the learned Trial Court on 12.12.2024, an application seeking waiver of cost was taken up for consideration. The same was dismissed holding that it was neither signed by the plaintiff nor it was accompanied by any affidavit of the party.
4. The order impugned before this Court is order dated 07.02.2025 as when on the said date, another application was moved by the plaintiff to the



same effect, it also did not find favour with the learned Trial Court as the learned Trial Court noticed that such application was also neither signed by AR of the plaintiff nor any supporting affidavit of AR of the plaintiff had been filed.

5. The plaintiff was, accordingly, directed to deposit the cost on or before next date, failing which the suit would entail dismissal for *non-prosecution*.

6. Such order dated 07.02.2025 is under challenge.

7. Learned counsel for petitioner/plaintiff submits that since the non-appearance before the learned Trial Court was on account of the personal exigency of the counsel himself, the application was, therefore, moved by the concerned counsel, which was supported with the affidavit of the concerned counsel. It is submitted that such application had been moved with the consent and knowledge of the plaintiff and the Court should not have adopted hypertechnical and rigid approach, while considering the same. He, however, states that if permitted, the plaintiff would move appropriate application under his own signatures.

8. Unfortunately, there is another dimension to the matter as when the matter was taken up by the learned Trial Court on 12.03.2025, the learned Trial Court, noticing that the cost has not been paid, has dismissed the suit for *non-prosecution*.

9. Learned counsel for the petitioner/plaintiff, when asked, apprised that an application seeking restoration has already been filed before the learned Trial Court under Order IX Rule 9 CPC and such application is yet to be considered by the learned Trial Court.

10. Learned counsel for petitioner undertakes that the plaintiff would move application afresh seeking waiver of the cost and such application would be



signed by AR of the plaintiff and affidavit of the AR of the plaintiff would also be enclosed therewith, by way of abundant caution.

11. The present petition is, accordingly, disposed of with direction to learned Trial Court to consider the application seeking restoration as well as the proposed application seeking waiver of cost, together, in a compassionate manner and to dispose them in accordance with law after giving due opportunity of hearing to both the sides.

12. The petition, along with pending applications, stands disposed of accordingly.

13. The next fixed date of hearing before this Court i.e. 20.05.2025 stands cancelled.

14. This Court also expects that the abovesaid applications shall be taken up by the learned Trial Court as expeditiously as possible and, preferably, within a period of two weeks from today.

15. A copy of this order be given *dasti* under the signatures of the Court Master and a copy of this order be also transmitted to the learned Trial Court for information.

(MANOJ JAIN)
JUDGE

APRIL 16, 2025/ss/js