

CS DJ 247/21

SOMWATI @ OMWATI Vs. ROHTASH KUMAR

26.05.2022

Present: Sh. ZS Yadav-Ld. Counsel for the plaintiff along with LR of plaintiff.

Perusal of file shows that plaintiff had filed suit for recovery of Rs. 9,12,000/- against the defendant however, even before notice of the suit could be issued, plaintiff died. Thereafter, plaintiff moved an applicaiton u/o XXII rule 3 CPC, notice of which was sent to defnedant which has been received back unserved.

This court is of the opinion that once notice of the suit has not been served to the defendant till date, there was not requirement for the issuance of the notice u/o XXII rule 3 CPC. Accordingly, application u/o XXII rule 3 CPC is taken up for disposal.

By way of this application it has been stated that plaintiff has expired on 06.09.2021 leaving behind five LRs i.e. three sons and one daughter and her husband. Ld. Counsel for Plaintiff has also filed affidavit of all the LRs in support of the application.

Since, right to sue survives in favour of LRs of the plaintiff and against the defendant and accordingly, application u/o XXII rule 3 CPC is allowed. Amended memo of parties filed on 30.09.2021 is taken on record.

Issue summons for settlement of issues to the defendant for 25.02.2023 on filing of PF/RC, speed post, courier for **25.02.2023**.

At request, summons be given dasti as prayed for.

(Harish Kumar)
ADJ-02/ North/ Rohini Court
Delhi/26.05.2022