

**IN THE COURT OF MS. RAVINDER BEDI,
ADJ-02(SHAHDARA),
KARKARDOOMA COURTS, DELHI**

EX No. 755/18

**ATUL GOEL Vs. MODERN NEW KAPOOR JEWELLERS
P. LTD AND ORS.**

(CNR No. DLSH01-004907-2018)

and

EX No. 756/18

**M/S. SHIVA GOEL Vs. MODERN NEW KAPOOR
JEWELLERS P. LTD**

(CNR No. DLSH01-004906-2018)

02.12.2022

ORDER

1. This Order shall dispose off an application under Order 22 Rule 4 CPC r/w Section 151 CPC dated 28.08.2018 filed by DH seeking to bring on record the legal representatives of JD-Sh. Sita Ram Kapoor.

2. In the said application, it is stated that JD -late Sh. Sita Ram Kapoor expired on 13.06.2018 at Mandoli Jail as per information/letter received from Jail Superintendent, Mandoli Jail. It is submitted that as per knowledge of DH, Smt. Rama Kapoor is one of LRs of deceased Sita Ram Kapoor. It is argued that right to sue survives in favour of surviving LRs and therefore, prayer is made to implead LRs of deceased JD Sh. Sita Ram Kapoor.

3. Ld. counsel for JD/ proposed LR's has filed reply to the application. It is stated that JD is survived by his wife and children but it is contended that wife Smt. Rama Kapoor had no knowledge about the contents of the execution proceedings pending before the Court of Ld. ACMM (E), Karkardooma. It is not denied that deceased Sh. Sita Ram Kapoor has left behind Smt. Rama Kapoor and her two sons-Sachin Kapoor and Ajay Kapoor and Smt. Chandni Anand (daughter) as his legal heirs. It is argued that LR-Smt. Rama Kapoor has not inherited any property left behind by the deceased. It is argued that deceased /JD was arrested on 21.01.2013 and was lodged in Tihar Jail. He could not be released on bail and had expired on 13.06.2018 in Tihar Jail. It is further argued that JD has not left behind any assets, movable or immovable. Smt. Rama Kapoor is not the 'Legal Representative', who could have represented the Estate of deceased under law. Ld. counsel argues that Smt. Rama Kapoor is not the administrator of estate of the deceased nor the deceased left behind any Will in favour of his wife or any other person. Ld. counsel argues that since Smt. Rama Kapoor did not inherit any assets of deceased JD, she could not be termed as 'legal representative'.

4. I have heard Ld. counsel for DH as well as Ld. counsel for JD in the light of relevant statutory provisions of the Code. The present connected execution proceedings are filed by DH against JDs for execution of Judgment and Decree passed by Ld. Predecessor. For deciding the application, this Court has to consider only as to whether proposed applicants are the legal heirs of deceased JD without considering the question of

determination of whether they have any beneficial interest in the estate of deceased.

5. In **Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique**, 1989 Supp (2) SCC 275 : AIR 1989 SC 1589, Hon'ble Supreme Court examined the concept of 'Legal Representative' within the meaning of **Order 22, Rule 2, C.P.C** and observed thus:

“Legal Representative” as defined in Civil Procedure Code which was admittedly applicable to the proceedings in the Suit, means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. The definition is inclusive in character and its scope is wide, it is not confined to legal heirs only instead it stipulates a person who may or may not be heir, competent to inherit the property of the deceased but he should represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased.

6. Hon'ble Supreme Court in **Jaladi Suguna v. Satya Sai Central Trust**, 2008 (8) SCC 521, again made the legal position clear with respect to the definition “Legal Representative”. In **Suresh Kumar Bansal v. Krishna Bansal & Anr.**, Hon'ble Apex Court held as under:

“20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only.”

7. In **Dashrath Rao Kate v. Brij Mohan Srivastava** (2010) 1 SCC 277, Hon'ble Apex Court observed that the enquiry under Order 22 Rule 5 CPC is only of summary nature and limited to determination of the right of the legal heirs to be impleaded as legal representative.

8. Adverting to present case, there is no dispute as to legal representative to the suit. Proposed applicants state themselves to be LRs of deceased Sh. Sita Ram Kapoor. This Court may observe that filing an application to bring LRs on record does not amount to bringing the representatives on record and unless the same is decided or determined by the Court, it cannot be said that Estate of deceased is represented. Further the decision under Order 22 Rule 5 CPC is only for the purposes of bringing LRs on record for conducting of legal proceedings. It is not necessary that LRs should have a beneficial interest in the estate. Considering the circumstance, I observe that right to sue survives in favour of the surviving LRs of Sh. Sita Devi (since deceased). In such circumstances, the application stands allowed.

Amended memo of parties be filed within 15 days by the DH on record.

List the matter for arguments on Objection of LRs of JD No. 2 under Order 21 Rule 58 CPC by way of last and final opportunity on **10.02.2023**.

**Announced in the open court.
on 02.12.2022**

**(RAVINDER BEDI)
Additional District Judge-02,
Shahdara, KKD Courts, Delhi
02.12.2022.**