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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 186/1980**
TARUN KUMAR Plaintiff

Through: Mr. K.K. Bhuchar, Adv alongwith Ms
Usha Kumar, plaintiff No.3 in person.

versus

AJAY KUMAR Defendant

Through: Mr. J. M. Sarma, Sr Adv with Mr. R. B.
Phookan, Adv for LR's of D-2.
Mr. Rakesh Saini, Adv for D3 & 4.
Mr. Rajiv Bahl, Adv for two LR's of D-8

CORAM:

SH. RAJ KUMAR TRIPATHI (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

% **26.08.2017**

IA No. 6509/2017 (u/S 5 of Limitation Act r/w Section 151 CPC for seeking condonation of delay for setting aside abatement of suit and for substitution of legal heirs of deceased defendant No.2)

Reply to the IA not filed by defendants as well as LR's of deceased defendant No.2.

Learned counsel for defendants are ready to advance arguments on the IA straightway without filing any formal written reply.

Heard on IA

Record perused.

Learned counsel for defendants have no objection, if the delay as prayed in the IA, is condoned and the abatement of the suit is set aside.

In view of the reasons mentioned in the IA and the submissions advanced by learned counsel for both the parties, the instant IA preferred by plaintiffs is hereby allowed. The delay in filing the application for



substitution of LR of deceased defendant No.2, is directed to be condoned in the interest of justice.

The IA stands disposed of accordingly.

IA No. 6508/2017 (u/o XXII Rules 4 (2) (5) (a) & (b) r/w Section 151 CPC filed by plaintiffs for seeking substitution of LR of deceased defendant No.2)

Reply to IA not filed by defendants.

Heard on IA.

Record perused.

Defendant No.2- Raj Kumar is reported to have expired on 10.02.2015 living behind the LR as mentioned in para 6 of the IA. Wife of defendant No.2 and one of his son is reported to have pre-deceased him.

Right to sue survives in favour of LR of defendant No.2 as mentioned in para 6 of the IA.

Learned counsel for defendants have no objection, if the instant IA of plaintiffs is allowed and the LR as mentioned in para 6 of the IA are substituted and brought on record in place of deceased defendant No.2.

For the reasons discussed above and in view of submissions advanced by learned counsel for both the parties, the instant IA is hereby allowed. The LR of defendant No.2 as mentioned in para 6 of the IA are directed to be substituted and brought on record in place of deceased defendant No.2.

Amended Memo of Parties filed alongwith IAs by plaintiffs is directed to be taken on record.

The IA stands disposed of accordingly.

CS(OS) 186/1980

Record reveals that matter was at the stage of cross examination of PW1, when it came to the notice of the plaintiffs that defendant No.2



had already expired therefore, the plaintiffs moved an application for seeking substitution of LRs of deceased defendant No.2 alongwith an application for condonation of delay for setting aside the abatement. Both the applications preferred by plaintiffs have been disposed of today.

Accordingly, matter be re-notified for further cross examination of PW1-Tarun Kumar on 28.10.2017.

SH. RAJ KUMAR TRIPATHI (DHJS)
JOINT REGISTRAR (JUDICIAL)

AUGUST 26, 2017
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