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

+ **FAO 123/2024, CM APPL. 21527/2024—to implead LRs of deceased appellant Shiv Prasad, CM APPL. 21528/2024—stay**

SH SHIV PRASAD THROUGH HIS LRS 1 SMT MISRO DEVI & ANR.

..... Appellants

Through: **Mr. Raj Kumar Chandiwal and Ms. Natasha Rani, Advs.**

versus

SMT LAXMI DEVI & ORS.

..... Respondents

Through: **Mr. Satish Kumar Tomar, Adv.**

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

15.04.2024

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1. The present first appeal under Order XLIII Rule 1(d) read with Section 104 and 151 Civil Procedure Code (“CPC”) has been filed assailing the order dated 13.03.2024 passed by the learned ADJ-01, South West district, Dwarka Courts, Delhi (“Trial Court”), in MISC DJ ADJ 426/2022 in Civil Suit bearing no. 1976/2018 (1089/2018) titled as “*Laxmi Devi vs. Hans Raj & Ors.*”, whereby the application moved on behalf of appellants herein under Order IX Rule 13 Code of Civil Procedure, 1908 (“CPC”) has been dismissed. The appellants herein are the defendants before the learned Trial Court and the respondents are the plaintiff.

2. It is submitted on behalf of the appellants that the appellants are the legal heirs being the widow and daughter of deceased Shiv Prasad who were not aware about the present proceedings which they came to know after



notice was issued qua the execution proceedings. Thus the appellants moved an application under Order IX Rule 13 CPC which has been dismissed by the learned Trial Court observing that Order XXII is not applicable to the facts of the present application as the deceased Shiv Prasad died only after passing of the judgment. .

3. Learned counsel for the appellant further submits that the counsel appearing on behalf of the appellants herein and other defendants in the original suit had withdrawn his vakalatnama which was not intimated to the deceased Shiv Prasad in collusion and he was not aware about the setback therefore, the proceedings were conducted *ex-parte* and accordingly the *ex-parte* judgment was passed by the learned Trial Court. The learned counsel further submits that in these circumstances, the execution proceedings vide which the bailiff is to be appointed today by the learned ACJ be stayed.

4. Learned counsel for the respondents submits that he has been served with the notice for the appeal on 12.04.2024 and thus he seeks time to address the arguments in the present case. However, he submits that *prima-facie* Shiv Prasad had colluded with other two brothers Hansraj and Devraj and they had made some fabricated documents and instituted the suit, this argument has been denied on behalf of appellants. It is submitted that even on the date when the counsel for the appellant had withdrawn his vakalatnama on the previous date of hearing, deceased Shiv Prasad along with the other defendants had appeared before the learned Trial Court and the matter was referred to mediation. It is further submitted that the deceased was aware about the pendency of the present suit and deliberately did not appear. Therefore, in these circumstances, the present appeal is not maintainable.



5. Learned counsel for the respondents submits that respondents undertake not to press the execution petition till the disposal of the present appeal. In view of the submissions made on behalf of the respondents, the execution proceedings are stayed till disposal of the appeal.
6. Learned counsel for respondents submits that reply along with some documents is to be filed. Be filed within two weeks with an advance copy to the opposite side. Rejoinder, if any, be filed within one week thereafter with advance copy to the opposite side.
7. List for hearing on 23.05.2024.

SHALINDER KAUR, J.

APRIL 15, 2024
SDS