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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 699/2019**
MAMTA JAIN

..... Petitioner

Through : Mr.J.P.Sengh, Senior Advocate with
Mr.Sumit Chaudhary, Ms.Manisha
Mehta, Advocates.

versus

BABU LAL (DECEASED) THR LRS

..... Respondents

Through : None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **06.05.2019**

CM APPL No.21424/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 699/2019 & CM APPL No.21423/2018

This petition challenges the order dated 06.02.2019 whereby an application under Order IX Rule 13 CPC was allowed and the petition stood revived and restored to its original number. The learned counsel for the petitioner submits on 11.12.2017 the learned Trial Court has observed that Order IX Rule 13 CPC is not applicable on the facts and circumstances as though two addresses of the tenant were provided by the landlord, viz. one residential and another of the tenanted premises, the summons having being served on the tenanted premises and one Mr.Mukesh, an employee of the respondent having refused to accept the same (though later found to be the nephew of

the respondent). It was observed by the learned Trial Court since the tenant was served on the tenanted premises, an application under Order IX Rule 13 CPC would not be maintainable and thus the application was dismissed.

An appeal was filed stating interalia the respondent was not served at all on the second address viz. the residential address and hence raised suspicion and thus remanded the case to the learned Trial Court. The learned Trial Court then without looking into the merits and purely on observations made in the order passed by the learned RCT, in fact had toed in line of the leaned RCT and thus allowed an application under Order IX Rule 13 CPC; revived the petition and restored it to the original number and had given time to the respondent no.1 to file written statement.

In the circumstances, issue notice to the respondent through all modes returnable on 06.09.2019 and in the meanwhile the proceedings before the learned Trial Court and even in execution, shall remain stayed till the next date of hearing.

Compliance of Order XXXIX Rule 3 CPC be made within ten days from today.

Order *dasti*.

YOGESH KHANNA, J.

MAY 06, 2019

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