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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (COMM) 361/2018**
NADEEM MAJID OOMERBHOY

..... Plaintiff

Through Mr. Kanishka Shivhare, Adv.

versus

SH. GAUTAM TANK AND ORS.

..... Defendant

Through Ms. Aishwarya Chaturvedi, Adv. for
D-1&2.

CORAM:

SANJAY JINDAL (DHJS), JOINT REGISTRAR (JUDICIAL)

ORDER

% **14.12.2018**

Case file received from the court of Sh. Rakesh Kumar, Ld. JR, who is stated to be on leave today.

IA No. 8848/2018 u/O XXII R 4 r/w section 151 CPC filed by plaintiff for brining on record the LR's of deceased defendant no. 4.

No reply has been filed by the proposed LR's of deceased defendant no. 4 despite service of notice and availing last opportunity for this purpose.

It has already come on record on behalf of defendant nos. 1 & 2 that they have no concern with the present application.

No one is present on behalf of LR's of deceased defendant no. 4 since morning despite repeated calls. Hence, I proceed to dispose of the application with the assistance of learned counsel for plaintiff.

I have heard learned counsel for plaintiff and carefully perused the record.

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By way of present application, it is disclosed that defendant no. 4 Rashid Sattar Omerbhoy passed away on 13.03.2018 leaving behind two LRs as disclosed in para 3 of the present application being his son and daughter. It is mentioned that there are no other legal heirs of deceased defendant no. 4.

On perusal of record, it is clear that right to sue survives against the LRs of deceased defendant no. 4 and in absence of anything to the contrary, there is no reason to disbelieve the contention made by the plaintiff in the present application which is duly supported by affidavit of attorney of plaintiff.

Considering the overall facts and circumstances, the present application is found to be bonafide one and same is accordingly allowed. LRs of deceased defendant no. 4 are taken on record. Amended memo of parties be filed by plaintiff, if not already filed.

IA stands disposed of.

SANJAY JINDAL (DHJS)
JOINT REGISTRAR (JUDICIAL)

DECEMBER 14, 2018/pk