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

+ **CM(M) 1419/2022**

DR RANJAN DOHIL & ORS. Petitioners

Through: **Mr. Rajesh Manchanda, Advocate.**

versus

AMAR SHOES AND LEATHER WEARS & ANR. Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

16.12.2022

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[The proceeding has been conducted through Hybrid mode]

CM APPL. 54643/2022 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 1419/2022 & CM APPL. 54642/2022 (for stay)

3. Mr. Rajesh Manchanda, learned counsel appearing for the petitioner assails the order dated 03.11.2022, whereby the application filed by the petitioner under Section 151 seeking dismissal of the suit on the ground that on the date of filing of the suit, the defendant, namely, Mr. Hardev Singh was not alive and submits that a suit cannot be filed and maintained against a dead person.
4. In support of his contentions, Mr. Manchanda relies upon the case of *Pratap Chand Mehta vs. Smt. Krishna Devi Mehta* (Deceased by LRs) reported in AIR 1988 Delhi 267 on 25.09.1987.

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The judgment is taken on record.

5. According to Mr. Manchanda, the judgment in the case of ***Pratap Chand Mehta vs. Smt. Krishna Devi Mehta***, squarely covers the case as projected by him and the learned Trial Court had erroneously dismissed the application overlooking the law, which is relevant so far as the issue of filing of a suit against a dead person is concerned.

6. Learned counsel, therefore, submits that the issuance of summons and subsequent proceedings, is a nullity in law and, therefore, there is a procedural irregularity, committed by the Court below.

7. In view of the above submission as well as the judgment rendered by a Co-ordinate Bench, this Court is of the opinion that the issue needs consideration.

8. Accordingly, issue notice. Notice be served through all permissible modes. Additionally through learned counsel appearing for the respondent before the learned Trial Court.

9. In the meanwhile, learned Trial Court is requested to defer the proceedings for the date already fixed before it and adjourn it to a date beyond the date given by this Court.

10. List on 16.05.2023.

TUSHAR RAO GEDELA, J

DECEMBER 16, 2022/nd