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

+ **CS(OS) 65/2018 & I.A. 41106/2024 I.A. 41107/2024**

VLS COMMODITIES PRIVATE LIMITEDPlaintiff

Through: Ms. Madhavi Khare and Mr. Apoorva
Bhumesh, Advs.

versus

**LATE SOMESH MEHROTRA THROUGH (SADHNA
MEHROTRA) & ORS**Defendants

Through: Ms. Malvika Trivedi, Sr. Adv. with
Mr. Ashok Kumar Sharma, Adv. for
proposed LR of defendant no. 3.
Mr. Hemant Gupta, Adv. for
defendant No. 4.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **11.11.2024**

I.A. 41107/2024 (under Section 5 of the Limitation Act, 1963)

1. This is an application under Section 5 of the Limitation Act, 1963
filed by the plaintiff, thereby seeking condonation of 10 days delay in filing
I.A. No. 41106/2024.

2. For the reason stated in the application, the application is allowed and
accordingly, stands disposed of.

**I.A. 41106/2024 (under order XXII Rule 4 read with Rule 9 of the Code of
Civil Procedure, 1908)**

3. This is an application filed under Order XXII Rule 4 read with Rule 9
of the Code of Civil Procedure, 1908 ('CPC') for bringing on record the
legal heirs of defendant no. 3 i.e. late Shri Mahesh Prasad Mehrotra.



4. Learned counsel for the applicant/plaintiff states that the defendant no. 3 unfortunately passed away on 05.05.2024 and is survived by Class-I legal heirs being Mrs. Sadhana Mehrotra, Ms. Daya Mehrotra, Mr. Shivesh Mehrotra and Ms. Shivani Mehrotra. She states that Mrs. Sadhana Mehrotra and Ms. Daya Mehrotra are already on record as defendant nos. 1 & 2. She states that by way of this application, the remaining legal heirs i.e. Mr. Shivesh Mehrotra and Ms. Shivani Mehrotra are sought to be brought on record. She states that the delay in bringing the remaining two legal heirs on record be condoned and the application be allowed.

5. Issue notice.

6. Learned counsel for defendant nos. 1 & 2 fairly admits that Mr. Shivesh Mehrotra and Ms. Shivani Mehrotra are the legal heirs of late Shri Mahesh Prasad Mehrotra. He states, however, that it is apprehended that Mr. Rajesh Jhalani, who is representing the plaintiff in the suit, cannot represent Shivani Mehrotra and/or Shivesh Mehrotra.

7. Ms. Malvika Trivedi, learned Senior Counsel enters appearance on behalf of Ms. Shivani Mehrotra and states that Ms. Shivani Mehrotra will be independently contesting these proceedings. She states that Mr. Rajesh Jhalani will not be representing Ms. Shivani Mehrotra. She states that Ms. Shivani Mehrotra adopts the written statement filed by deceased defendant no.3.

8. Learned counsel for defendant no. 4 states, they have no objection to these proceedings.

9. This Court has considered the submission of the parties.

10. The issue of conflict, if any, of Mr. Rajesh Jhalani and Mr. Shivesh Mehrotra will be considered, if the issue so arises and to that extent, the



objections of defendant nos. 1 & 2 are kept open. However, since it is admitted that Mr. Shivesh Mehrotra and Ms. Shivani Mehrotra are the legal heirs of late Shri Mahesh Prasad Mehrotra, the prayer sought in the application is bound to be allowed.

11. Accordingly, the captioned application is allowed. The delay in filing the application has already been condoned hereinabove and accordingly, Mr. Shivesh Mehrotra and Ms. Shivani Mehrotra are impleaded as defendant nos. 3(A) & 3(B) respectively.

12. It is directed that the newly impleaded defendants shall remain bound by the written statement, already filed on record by late Shri Mahesh Prasad Mehrotra.

13. The plaintiff is directed to file an amended memo of parties within two (2) weeks.

14. With the above directions, the application stands disposed of.

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15. Upon steps being taken by the plaintiff, issue notice to newly impleaded defendant no. 3(A) through all permissible modes.

16. Learned counsel for the plaintiff states that the matter is at the stage of recording of evidence and the evidence by way of affidavit on behalf of the plaintiff has already been filed on record.

17. With the consent of parties, Mr. Amar Nath, District Judge (Retd.) (Mobile No. 9958697030), is appointed as the Local Commissioner for recording of evidence in accordance with the Guidelines framed by the High Court on 01.07.2024 in this regard. The registry is directed to forward a copy of the Guidelines to the learned Local Commissioner along with this order. The Local Commissioner is directed to ensure that the evidence is



recorded within six (6) months from the first date of hearing.

18. The defendants are directed to file their list of witnesses within two (2) weeks.

19. The fee of the Local Commissioner is fixed at Rs. 10,000/- per hearing with a cap of Rs. 3,00,000/-. It is directed that the fee of Rs. 10,000/- will be charged for the date when the evidence is recorded. The hearing shall be for a maximum of two hours.

20. The parties shall ensure that in case any adjournment is being sought, intimation of the same is sent to the Local Commissioner at least 48 hours in advance, failing which the parties will be liable for payment of fee of Rs. 10,000/- to the Local Commissioner for the adjournment of the scheduled hearing, as per the discretion of the Local Commissioner.

21. At this stage, fee and cost for recording of evidence will be borne by plaintiff and the cost will abide by the final outcome of the suit.

22. List before the learned Local Commissioner on 09.12.2024 for fixing a date for recording of evidence.

23. List before Joint Registrar (J) on 28.01.2025.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 11, 2024/akc/MG

[Click here to check corrigendum, if any](#)