

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

+ **RSA No. 233/2004**

Date of Decision: July 02, 2010

SUDERSHAN SINGH Appellant
Through: Ms. Tejinder Kaur, Special
Power of Attorney holder
alongwith Appellant in
person.

versus

AMRIT LATA JHAMB Respondent
Through: None.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

J U D G M E N T

ARUNA SURESH, J.

CM No.2445/2005 (under Order 22 Rule 4 CPC r/w Section 2(1) of DRC Act & Section 151 CPC in RSA No. 233/2004

1. Appellant had filed a suit being Suit No.83/2000 seeking permanent injunction against his tenant Smt.Amrit Lata Jhamb in the first floor of premises bearing No.M-16, Green Park

(Main), New Delhi. The said suit was dismissed in default by the Trial Court on 17th October, 2001 due to non-appearance of the appellant. Thereafter he filed an application under Order 9 Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'CPC') seeking restoration of the suit. The said application was dismissed by the Trial Court vide its order dated 7th August, 2002. Challenge to the said order was also unsuccessful and the Appellate Court dismissed the appeal vide impugned order dated 16th September, 2004. Appellant preferred this appeal challenging the orders of the courts below.

2. During pendency of this appeal, respondent tenant Amrit Lata Jhamb expired. Consequently, in view of provisions contained in Section 2(1) of the Delhi Rent Control Act (for short 'DRC Act') appellant filed this application for bringing on record Sh. Harish Jhamb, her husband as respondent, as according to the appellant, he was the only legal heir of the deceased tenant who could enjoy the tenancy for a period of one year only after the death of respondent tenant and other legal heirs of deceased were neither necessary nor proper party to the appeal. Before this application could be decided, Harish Jhamb also expired. Hence, proceedings against Harish Jhamb qua this application stood abated on his death.

This application, therefore, needs no consideration as it stands abated.

CM No. 8762/2006 (under Order 22 Rule 5 CPC r/w Sections 2(1) of DRC Act & Section 2(11) & Section 151 CPC

3. This application was filed by the appellant under Order 22 Rule 5 CPC read with Sections 2(1) & 2(11) of DRC Act and Section 151 CPC. It is averred by the appellant that after the death of respondent tenant, statutory tenancy had extinguished on 5th December, 2004 and thereafter it was essential to replace the defending party by the lawful successor i.e. Harish Jhamb, for which an application was filed on 15th February, 2005. Harish Jhamb contested the application contending that besides him, deceased tenant had left behind her son Kapil Jhamb and daughter Poonam Nanda, as her legal heirs, who were entitled to inherit the tenancy. Therefore, she sought for recording of evidence to find out the existence and actual address of Poonam Nanda and Kapil Jhamb as Kapil Jhamb is missing for quite sometime and even Harish Jhamb did not know his address.

4. As discussed above with the death of Harish Jhamb, application CM No.2445/2005 stood abated. No evidence is required to be adduced on record to find out the whereabouts of Poonam

Nanda and Kapil Jhamb, who happened to be the children of Amrit Lata Jhamb, the deceased tenant. Under these circumstances, they are not required to be brought on record as legal heirs of deceased tenant Amrit Lata Jhamb and thereafter her husband Harish Jhamb, as stated by the appellant himself.

5. It is submitted by Special Attorney of the appellant that she is entitled to the relief as claimed in this appeal without arraigning Poonam Nanda and Kapil Jhamb as respondents in the appeal. In other words, she seeks relief to be granted to her in the absence of legal heirs of respondent. After the death of respondent appeal would automatically stand abated if legal representatives of deceased respondent are not arraigned as respondents in the appeal. Relief claimed by the appellant in the suit was for permanent injunction and as per admission of the appellant himself, children are not residing in the suit premises and therefore even Poonam Nanda and Kapil Jhamb cannot be termed as 'tenants' within the meaning of Section 2 (1) of DRC Act. In the prayer clause of the suit, restraint order was sought not only against the tenants but also against her representatives, family members, servants, agents, associates, assignees etc. Kapil Jhamb and Poonam Nanda happen to be the family members. Therefore relief sought in the main suit is

also against them. Be that as it may, appellant does not want to implead aforesaid two legal heirs of the deceased tenant as her legal heirs thus nothing survives in the appeal as it stands abated. Hence, in the absence of any respondent on record, interim relief, as prayed, cannot be granted to the appellant.

6. Before parting with the appeal it is noted that appellant had filed an eviction petition being E 1361/2006, under Sections 14(1) (a) and (h) of the Act seeking eviction of Amrit Lata Jhamb. An eviction order was passed in favour of the appellant and against the tenant. The said eviction order was challenged by Amrit Lata Jhamb in appeal. During pendency of the appeal, as noted above, she expired and thereafter her husband Harish Jhamb stepped in her shoes and became the appellant. In the appeal, parties settled their disputes in terms contained in the Compromise Deed Ex. A-1. Harish Jhamb made a statement before the court accepting the terms and conditions of the Compromise Deed executed between him and the landlord voluntarily. He undertook to vacate and hand over peaceful and vacant possession of the suit premises to the landlord on or before 28th February, 2011 and also gave an undertaking that he would pay Rs.6,000/- per month as rent on or before 7th day of each calendar month w.e.f. 1st March, 2007. In view of this

settlement, appeal was disposed of by the Appellate Court as compromised vide its order dated 12th February, 2007. Since an eviction order in terms of the compromise has already been passed in favour of the appellant, he is at liberty to execute the eviction order in accordance with law.

RSA No. 233/2004 & CM Nos. 13955/2007 (for direction), 17590/2008 (for direction), 5384/2009 (for modification of order dated 24th March, 2009) & 14798/2004 (for stay)

7. Since appeal stands abated, all these applications have become infructuous. The same are accordingly dismissed.

**ARUNA SURESH
(JUDGE)**

**JULY 02, 2010
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