



2025:DHC:3644



§~54

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 02.05.2025*+ **C.R.P. 130/2025 & CM APPL. 26272/2025**

SHRUTI MANAV SHARMA &amp; ANR. ....Petitioners

Through: Mr. Anunaya Mehta & Ms. Kunika  
Champawat, Advocates.

versus

SUNAINA SINGH ....Respondent

Through: Mr. Akhil Sachar & Ms. Sunanda  
Tuloyan, Advocates.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. This Court had briefly heard both the parties on 01.05.2025 and passed the following directions:

“3. The present Petition has been filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] seeking to challenge an order dated 07.04.2025 passed by the learned District Judge-06 (South), Saket, New Delhi [hereinafter referred to as “Impugned Order”].

4. Learned Counsel for the Petitioners submits that the Impugned Order is unreasoned and the learned Trial Court has proceeded to dismiss the Applications mentioned above in view of the fact that the Defendant No.1 has passed away. He seeks to rely upon Paragraphs 106 to 108 of the Impugned Order in this behalf which are reproduced below:

*“106. This Court has carefully heard and perused the submissions as advanced on behalf of the concerned parties. The fact pertaining to the demise of defendant no.1, coupled with the order dated 24.01.2025 as passed by The Hon’ble High Court of Delhi, has forced this Court to look, and adjudicate upon the present applications from a different perspective.*

*107. It is no more res-integra that any order passed qua a dead person, is in essence a nullity, as the Court does not have jurisdiction over a person who is not alive.*



*108. Accordingly, this Court, at the present stage, is not required to, and is neither inclined to touch upon the merits of the present matter. If one of the defendants, who is/was also an applicant has passed away during the pendency of the decision on the application then the application cannot be decided in the absence of the representatives of the said defendant.”*

5. Learned Counsel for the Petitioners submits that if the learned Trial Court was not inclined to proceed with the matter, then the order in the Applications which were argued, should have been deferred until impleadment/until this issue was decided. However, dismissing the Application for non-impleadment of legal representatives of Defendant No.1 is not in accordance with law.

6. The Impugned Order is a composite order dismissing two Applications, one under VII Rule 11, CPC and the second under Order XXXIX Rule 4, CPC. The Impugned Order however directs the parties to file an Application under Order XXII CPC in view of the demise of Defendant No.1. The Impugned Order further directs that these Applications cannot be decided in the absence of the representatives of the Defendant No.1 before the learned Trial Court and while giving this finding, it dismisses both the Applications.

7. Issue Notice.

7.1 Learned Counsel for the Respondent appearing on advance service accepts Notice and submits that he has not received a copy of the paper book.

8. Let a copy of the complete paperbook be supplied to the learned Counsel for the Respondent by the Petitioner during the course of the day.

9. Learned Counsel for the Respondent seeks time to take instructions.

10. Prima facie, if the learned Trial Court was not proceeding to decide these Applications in view of the demise of Defendant No. 1, the dismissal of the Application under Order VII Rule 11 of the CPC and Order XXXIX Rule 4 of the CPC was not warranted.”

2. As stated above, the matter was adjourned at the request of the Respondent to take instructions.

3. This Court has perused the Impugned Order. As set out in the order dated 01.05.2025, the learned Trial Court has given a finding that, in view of the fact that one of the defendants has passed away, the pending



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Applications cannot be decided. This finding of the learned Trial Court is given in paragraph 108 of the Impugned Order, which is reproduced below:

*"108. Accordingly, this Court, at the present stage, is not required to, and is neither inclined to touch upon the merits of the present matter. If one of the defendants, who is/was also an applicant has passed away during the pendency of the decision on the application then the application cannot be decided in the absence of the representatives of the said defendant."*

4. Once there is a finding that the Applications cannot be decided since Defendant no.1 had passed away, it was apposite for the learned Trial Court to defer the hearing in those Applications until the legal heirs of the deceased Defendant were impleaded. This was however not done by the learned Trial Court.

5 The Impugned Order dated 07.04.2025 is accordingly set aside.

5.1 The learned Trial Court shall examine the Applications filed by the Petitioners under Order VII Rule 11, CPC and under Order XXXIX Rule 4, CPC afresh, once the impleadment of the legal representatives of the deceased Defendant is complete.

6. The Petition is disposed of in the foregoing terms. All pending Application(s) stand closed.

7. It is however clarified that the Court has not examined the matter on merits. The rights and contentions of both parties are left open to be agitated before the learned Trial Court.

8. The parties shall act based on the digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**MAY 2, 2025/ ha**

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