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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 05th May, 2026

+ CM(M) 933/2023 & CM APPL. 29710/2023

ASHWANI GUPTAPetitioner

Through: Mr. Aditya Nayyar, Adv.

versus

TALA RAM KAMBOJ & ORS.Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

ORDER (Oral)

Rajneesh Kumar Gupta, J.

1. This hearing has been conducted through hybrid mode.
2. The present petition has been filed on behalf of the petitioner under Article 227 of the Constitution of India, 1949, assailing the order dated 13th January, 2023 passed by the learned Appellate Court in RCA DJ No. 37/20, whereby the appeal qua respondent no. 1 has been dismissed in default for non-prosecution.
3. No one has appeared on behalf of respondents.
4. Heard. Record perused.
5. The impugned order dated 13th January, 2023 reads as under:

“No steps in terms of previous order have been taken by the appellant for prosecution of the present appeal qua respondent no. 1. It is submitted by Ld. Counsel for the appellant that the steps could not be taken as the appellant is not aware about the death of respondent no.1 nor is he aware about the whereabouts/details of



his LRs if he has already expired. Time sought on behalf of the appellant to take steps for substituted service of respondent no.1, however, looking into previous conduct of the appellant, I am not inclined to grant any further time for the aforesaid purpose. The present appeal qua respondent no. 1 is accordingly dismissed in default for non-prosecution....”

6. Learned Counsel for the petitioner submits that the court has passed the impugned order without appreciating the facts of the case as the respondent No. 1 is the necessary party in the appeal. The service of respondent No. 1 is necessary for the proper adjudication of the appeal and to avoid miscarriage of justice.

7. Keeping in view the facts and circumstances of the case, this Court is of the opinion that, it would be in the interest of justice, if one more opportunity is granted to the petitioner to take appropriate steps for the service of respondent No. 1. Accordingly, the appeal qua respondent no. 1 is restored and one more opportunity is granted to the petitioner to take appropriate steps for service of respondent No. 1. The petition is disposed of in the above said terms. Pending application(s), if any, also stands disposed of.

RAJNEESH KUMAR GUPTA, J

MAY 05, 2026/sds/tp