

(2018) 01 DEL CK 0280

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 25 Of 2018, Civil Miscellaneous No. 607, 608 Of 2018

Kamala Chamoli & Anr

APPELLANT

Vs

M/S Pre Press Machinery & Services Pvt Ltd

RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 37, Order 22 Rule 4

Citation : (2018) 01 DEL CK 0280

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Syed Hasan Isfahani, Parvez Zaidi

Final Decision : Dismissed

Judgement

R.K.Gauba, J

1. The respondent, hereinafter referred to as the plaintiff, had instituted civil suit (712/2010) under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.4,05,000/- on 12.11.2010 against Kalp-Taru Scan-N Print Media suing it through its proprietor Ramesh Chamoli (the defendant). On the application of the said defendant, by order dated 11.02.2014, leave to defend was granted on the condition of deposit of certain amount. The defendant failed to comply with the said condition and died on 17.05.2014. On the application of the plaintiff under Order XXII Rule 4 CPC, the petitioners described as the wife and son respectively of the said defendant, have been substituted by order dated 05.12.2017 of the Additional District Judge against the objections to the effect that the cause of action has not survived. It is the said order which is sought to be assailed through the petition at hand.

2. To say the least, the petition is wholly devoid of substance. The defendant in the suit may have been described by the name of the proprietary concern. But the fact remains that the suit was directed against Ramesh Chamoli, the

proprietor of the business in the name of which he allegedly had undertaken the liability. Upon his death, his estate would have devolved upon the petitioners, they being his legal heirs. Mere substitution under Order XXII Rule 4 CPC cannot be construed as they having been held responsible to discharge the liability. They would have the opportunity to raise all legal defences as the case proceeds further.

3. For above reasons, the petition is dismissed with costs of Rs.20,000/-.

4. Pending applications also stand disposed of.