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**(2009) 02 DEL CK 0206**

**Delhi High Court**

**Case No:** C.R.P. 67 of 2007

Harish Chawla

APPELLANT

Vs

Rakhi Jain and Others

RESPONDENT

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**Date of Decision:** Feb. 9, 2009

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) & Order 39 Rule 10

**Citation:** (2009) 02 DEL CK 0206

**Hon'ble Judges:** S.N. Dhingra, J

**Bench:** Single Bench

**Advocate:** S.N. Kumar and K.B. Soni, for the Appellant; D.K. Garg and Manzoor Ali Khan, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Shiv Narayan Dhingra, J.

This revision petition has been preferred by the petitioner assailing the order dated 25th January 2007 passed by

learned Additional District Judge, Delhi whereby an application of the plaintiffs (respondents herein) under Order 39 Rule 10 of CPC was allowed

and defendant No. 1 (petitioner herein) was directed to deposit the arrears of rent @ of Rs. 1,71,550/- per annum from February 2000 onwards

till date within two months of the order.

2. It is an undisputed fact that the premises in question was let out by M/s Krishna Roller Flour Mills to Mr. S.M. Aggarwal and Mr. Harish

Chawla vide lease deed dated 27th April 1978 on an annual rent of Rs. 2.35 lac. Mr. Harish Chawla (petitioner herein) filed a suit before this

Court being Suit No. 335 of 1996 and he made an application that Mr. S.M. Aggarwal be relieved from the responsibility and obligations of the

lease deed and this Court allowed application of Mr. Harish Chawla vide order dated 11th April 1979 and relieved Mr. S.M. Aggarwal of all

responsibility and obligations of the lease deed dated 27th April 1978. Hence Mr. Harish Chawla became the sole person responsible under the

lease deed and this order has become final.

3. The contention of the petitioner is that the trial court wrongly came to conclusion that Mr. Harish Chawla was the person responsible to pay rent

under the lease deed. It is also contended that the lease deed was executed by a partnership firm but the suit before the trial court has been filed by

Lrs of the partners and the suit was not maintainable.

4. It would not be appropriate for this Court at this stage to devolve upon the issue of maintainability of suit. Suffice it to say that all the partners of

the erstwhile partnership firm which gave the premises on lease to the petitioner and Mr. S.M. Aggarwal, have died. The partnership firm thus

came to an end. The property of the partnership firm that had to devolve upon and go to different partners, all partners having died, had to go to

Lrs. The lessee is obliged to pay rent of the property to the owners. In the event the lessee had a doubt as to who was the right person to whom

the rent was to be paid, it was obligatory upon the lessee to file an interpleader suit in the court pleading therein that since the partners of firm have

died to whom the rent should be paid by him. When the petitioner/lessee had not taken any such steps of filing an interpleader suit, the lessee

cannot turn around and say that he is not liable to pay rent to the legal heirs of the erstwhile partners and usurp the property to himself. The entire

effort of the lessee (petitioner herein) seems to be to usurp the property to himself and that seems to be reason of the lessee having taken the plea

of getting the ownership by way of adverse possession. The trial court had rightly dismissed this plea of the lessee/petitioner becoming the owner

by way of adverse possession. The petitioner was a tenant under the lease deed. He continued to be a tenant. Initially the partnership firm being

owner had rights as a lessor and after death of the partners, the Lrs of the partners have a right to inherit the ownership as well as right to claim rent

from the lessee. The question of petitioner's being in adverse possession does not arise. It is an undisputed fact that the partners of the erstwhile

firm who leased out the property have died.

5. The other contention of the petitioner is that another partnership firm was constituted in the same name and now the Lrs of the erstwhile partners

had no right to file the suit or claim rent. In my view, this argument of the counsel for the petitioner must fail. The partnership firm in itself is not a

legal entity. A partnership firm is known by its partners. A partnership firm is only a business entity and can sue only through its partners. A

partnership firm gets dissolved on account of death of a partner, unless there is a provision in the partnership deed of inducting new partners on

death of one of the partners. If a new firm is constituted after death of all the partners, new firm is a different entity to be known by its own

partners. Merely having the same name would not make the two partnership firm as the same entity. Counsel for the petitioner relied upon Sunil

Siddharthbhai Vs. Commissioner of Income Tax, Ahmedabad, Gujarat, and argued that qua the assets, there is a shared interest during the

subsistence of the partnership and the value of the interest of each partners qua that assets cannot be isolated or carved out from the value of the

partner's interest in the totality of the partnership assets. I think, this reliance by the petitioner on the judgment is misplaced. It is not the case of the

continuation of the partnership firm. The partnership firm is not in existence after death of its partners and the Lrs of the deceased partners have

ascertained rights qua the assets falling in share of each of the deceased/partners.

6. The other contention of the petitioner counsel is that the petitioner has purchased 27% shares in the property from the co-owners. This aspect

has been discussed by the trial court and the trial court has not asked the petitioner to deposit the entire rent of Rs. 2.35 lac per annum. The order

passed by the learned trial court is qua rest of the shares which falls to other owners.

7. In view of foregoing facts, I find no infirmity in the order. This petition is a frivolous petition and is hereby dismissed with cost of Rs. 50,000/-.

The cost shall be recovered by the trial court from the petitioner by execution, if it is not paid by the petitioner.