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

+ **FAO(OS) 123/2015**

JANARDAN NIRMAN PVT LTD

..... Appellant

Through: Mr V. Shyamohan and Mr Apoorv Damodaran

versus

AGGCON EQUIPMENTS INTERNATIONAL

(P) LTD & ORS

..... Respondents

Through: Mr Adarsh Aggarwal for R-1

Mr Pradyuman Dubay for R-3

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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04.11.2015

CM No. 4786/2015 (delay in filing)

The delay in filing is condoned.

The application stands disposed of.

FAO(OS) 123/2015

We have heard the learned counsel for the parties. We are of the view that the application being I.A. No. 24371/2014 ought to be revived inasmuch as it has been filed under Order VII Rule 10 CPC and Order VII Rule 11 CPC by the defendant No. 1 / appellant herein. We are also informed that similar applications have been filed by defendant No. 3 which are pending before the learned Single Judge. We see no reason as to why the above mentioned application and the other two applications which are pending before the learned Single Judge ought not be taken up and considered together. In any event, the applications under Order VII Rule 10 CPC and Order VII Rule 11 CPC go to the root of the matter and they ought to be decided in the first instance and should not be

relegated to be decided as an issue in the suit. Consequently, we set aside the order dated 09.12.2014 and restore I.A. No. 24371/2014 to be heard and disposed of by the learned Single Judge along with the other two applications filed by defendant No. 3 under Order VII Rule 10 CPC and Order VII Rule 11 CPC. The said applications be listed before the learned Single Judge on 09.03.2016, the date on which the suit is already fixed before the learned Single Judge. In the meanwhile, the pleadings in I.A. No. 24371/2014 be completed.

The appeal is allowed as above.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

NOVEMBER 04, 2015
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