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

+ **FAO(OS) 228/2016 & CM 26948/2016**

SAURABH KAPOOR & ANR

..... Appellants

Through : Mr Ashish Mohan with Mr Manish
Kaushik

versus

GAURAV JOLLY & ORS

..... Respondents

Through : Mr Sidharth Chopra with Ms Safia Baid
and Ms Shruti Baid for R-3 & 4
Mr Gunjan Arora for R-1 & 2.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

ORDER

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24.01.2017

In this appeal only two points have been raised. The first being that the appellants/plaintiffs were not permitted to file the replication and the second being that the application under Order 39 Rule 4 CPC filed by the respondent/defendant was allowed and the *ex parte* ad interim order dated 10.07.2015 was vacated only on the ground that the appellants/plaintiffs' counsel did not appear but only a proxy counsel had appeared who was unable to advance arguments on behalf of the appellants/plaintiffs.

We have heard the learned counsel for the parties. The submission of the learned counsel for the appellants on the replication issue is that the replication was not filed within time inasmuch as there were talks of compromise going on between the parties and continued even on the date on which the impugned order was passed.

Considering this circumstance and the fact that even before us an attempt at settlement had been made which, of course, did not fructify, we are of the view that

the appellants/plaintiffs' replication could be taken on record. Accordingly, we direct that it be taken on record.

Coming now to the order passed in IA 20487/2015 which was filed by the respondent under Order 39 Rule 4 CPC, we feel that just because the plaintiffs' main counsel could not appear for whatever reason and only the proxy counsel was present, that by itself would not be a ground for setting aside or vacating the ad interim *ex parte* order.

Consequently, we restore IA 20487/2015 and also restore the interim order till the next date of hearing before the learned Single Judge on which date the learned Single Judge shall consider both the applications under Order 39 Rules 1 and 2 CPC by the plaintiffs/appellants and the application under Order 39 Rule 4 CPC by the respondent/defendant. It shall be open for him to pass any order continuing or otherwise or modifying the order in any manner in accordance with law.

Neither party shall take an adjournment. The counsel for the parties should be ready to argue the matter. In the first instance, these applications be placed before the learned Single Judge on 13.02.2017. The appeal stands disposed of, as above.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

JANUARY 24, 2017
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