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

+ CM(M) 1064/2017

MADRAS BOARDING HOUSE & ANR Petitioners

Through: Mr. Yogesh Jagia & Mr. Amit Sood,
Adv.

Versus

APPORVA GARG @ SWATI GARG & ORS Respondents

Through: Mr. Vaibhav Agnihotri, Adv. for R-4.

AND

C.R.P. 162/2017

MADRAS BOARDING HOUSE & ANR Petitioners

Through: Mr. Yogesh Jagia & Mr. Amit Sood,
Adv.

Versus

APPORVA GARG @ SWATI GARG & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.09.2017**

CM No.34841/2017 in CM(M) No.1064/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 1064/2017 & C.R.P. 162/2017

3. C.R.P. No.162/2017 under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the orders (dated 15th April, 2017 and 27th March, 2017 in CS No.57194/16 of the Court of Jitendra Kr. Mishra, Additional District Judge-01, Patiala House Courts, New Delhi) of dismissal of the application of the petitioners/defendants under Order VII Rule 11 of the CPC.

4. The said petition had come up before this Court on 31st July, 2017 when certain queries were made from the counsel for the petitioners / defendants and on request of the counsel for the petitioners / defendants, the petition was adjourned to today.
5. The counsel for the petitioners / defendants has placed before this Court, the deed of partnership with respect where to one of the queries was made.
6. CM(M) No.1064/2017 has been preferred against the order dated 8th August, 2017, in the same suit, though permitting the petitioners / defendants to file their written statement but subject to costs of Rs.70,000/- .The reason given for imposition of costs is that the written statement was filed after more than 115 days of dismissal of the application aforesaid under Order VII Rule 11 of the CPC and after three years of the institution of the suit.
7. Supreme Court recently in ***R.K. Raja Vs. U.S. Rayudu*** (2016) 14 SCC 275 has held that filing of an application under Order VII Rule 11 of the CPC though required to be decided before commencement of trial but does not in all cases lead to suspension of time for filing of the written statement and in appropriate cases where it is found that ground under Order VII Rule 11 of the CPC was not made out in law and / or the application was strategically filed to delay, no time for filing written statement is to be granted after the dismissal of the application under Order VII Rule 11 of the CPC.

8. As aforesaid, doubts were expressed in the Order dated 31st July, 2017 in C.R.P. No.162/2017 as to the maintainability of the application under Order VII Rule 11 of the CPC.

9. Considering that the petitioners / defendants have thereby delayed the disposal of the suit by over three years and even after disposal of the application under Order VII Rule 11 of the CPC took their own sweet time of more than 90 days for filing the written statement, I am of the view that the reasoning given by the ADJ for imposition of costs cannot be faulted with. Rather, it appears that the petitioners / defendants are fortunate that their right to file written statement has not been closed.

10. Option has been given to the counsel for the petitioners/defendants that if he is willing to have the petition opposed by the respondents / plaintiffs with the consequence of the right to file written statement being closed in exercise of powers under Article 227 if the Court is not convinced with the entitlement of the petitioners / defendants to file written statement after such delay, notice can be issued of the petition. The counsel for the petitioners / defendants is not agreeable.

11. The counsel for the petitioners / defendants seeks to withdraw C.R.P. No.162/2017 stating that since in the issues framed in the suit on 8th August, 2017, an issue has been framed with respect to the pleas of the petitioners / defendants, the petitioners / defendants do not want to pursue the challenge to order of dismissal of application under Order VII Rule 11 of the CPC and will avail the appropriate remedy before the Suit Court.

12. C.R.P. No.162/2017 is dismissed as withdrawn.
13. No merit is found in CM(M) No.1064/2017 which is dismissed.
14. It is made clear that the Court below will not be influenced by any observation made in order dated 31st July, 2017 in C.R.P. No.162/2017.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 22, 2017

‘gsr’..