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

+ **FAO(OS) 219/2019**

DD SALES CORPORATION Appellant

Through: Mr. Jayant K. Mehta, Mr. Rajiv Bajaj,
and Ms. Smiti Verma, Advocates.

versus

KAILASH DEVI KHANNA & ORS Respondents

Through: Mr. Ashish Virmani with Mr. Akshay
Abrol, Advocates.
Ms. Ms. Sagrika Wadhwa for R-5,6,7
and 8.

WITH

+ **FAO(OS) 220/2019**

DD GLOBAL CAPITAL PVT LTD Appellant

Through: Mr. Jayant K. Mehta, Mr. Rajiv Bajaj,
and Ms. Smiti Verma, Advocates.

versus

KAILASH DEVI KHANNA & ORS Respondents

Through: Mr. Ashish Virmani with Mr. Akshay
Abrol, Advocates.
Ms. Ms. Sagrika Wadhwa for R-5,6,7
and 8.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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08.11.2019

C.M. APPL. No.48407/2019 (Exemption) in FAO(OS) 219/2019

C.M. APPL. No.48410/2019 (Exemption) in FAO(OS) 220/2019

1. Allowed, subject to all just exceptions. The applications are disposed of.

C.M. APPL. No.48409/2019 (Delay) in FAO(OS) 219/2019

C.M. APPL. No. 48412/2019 (Delay) in FAO(OS) 220/2019

2. For the reasons stated in the application, the delay in re-filing the appeal is condoned. The applications stand disposed of.

FAO(OS) 219/2019 and C.M. APPL. No. 48408/2019 (Stay)

FAO(OS) 220/2019 and C.M. APPL. No.48411/2019 (Stay)

3. Notice. Learned counsel for the Respondents accepts notice for the original Plaintiffs in C.S. (COMM) No. 34 of 2016 which incidentally by the impugned order dated 28th August, 2019 of the learned Single Judge has been directed to be renumbered as an ordinary suit. Counsel also are appearing on behalf of the Respondents Nos. 5 to 8 who are supporting the present Appellants.

4. The present Appellants are Defendant Nos. 1 and 4 in the suit and the Respondent Nos. 5 to 8 are co-Defendants in the same suit.

5. The present appeals arise out of the common order dated 28th August, 2019 passed in I.A. No. 1701/2019 filed by Defendant No. 1 and I.A. No. 1702/2019 filed by Defendant No. 4 seeking amendment of the written statement.

6. With the consent of the parties, the appeals have been heard finally, since the point involved is not a complicated one.

7. The question before the learned Single Judge was whether the plea of Defendant Nos. 1 and 4 for amending the written statement nearly two years after the framing of issues in the suit was justified?

8. Learned counsel for the Appellants does not dispute that after the framing of issues, the examination of one witness on behalf of the Plaintiff has commenced but the cross-examination is yet to commence. The explanation offered by the Defendant Nos. 1 and 4 for seeking to amend the written statement and thereby bringing additional documents on record was that they could access the said documents only after the Economic Offences Wing ('EOW'), which was investigating certain criminal complaints, made them available.

9. The fact of the matter is that the amended written statement was already filed. It was simply required to be taken on record. The Court is of the view, after hearing learned counsel for the parties, that as long as a strict time schedule can be laid down to enable the Plaintiffs to file their replication to the amended written statement and also complete the admission/denial qua the additional documents, no serious prejudice would be caused to the Plaintiffs given the stage at which the suit is. Additionally, by subjecting the present Appellant to terms and requiring the Appellant to compensate the original Plaintiffs by costs as directed by the Court, the inconvenience caused to the Plaintiffs can also be satisfactorily addressed.

10. The Court notes that both applications were dismissed with cost of Rs.20,000/-. In view of the above discussion, the Court directs that both I.A. No. 1701/2019 and I.A. No. 1702/2019, shall stand allowed with costs of Rs. 20,000/- which shall be paid by the present Appellants to the Plaintiffs not later than 30th November, 2019. The amended written statement shall be taken on record, subject to compliance with the above direction.

11. By that date i.e. 30th November 2019, the Plaintiffs, who already have with them the copy of the amended written statement, will file their replication thereto. The admission/denial qua the additional documents shall be done by way of affidavit to be filed along with the replication.

12. The matter be fixed before the Joint Registrar on 10th December, 2019 for completion of the admission/denial qua the additional documents. Neither party will seek any adjournment on that date and remain present before the Joint Registrar.

13. The Court makes it clear that the progress of the trial shall not be halted in any manner because of this order. If the parties wish to file any supplementary affidavit of evidence qua additional documents, they are permitted to do so. The right of the parties to seek appropriate remedies for recall or re-examination of a witness as permissible in law is reserved.

14. The impugned order dated 28th August, 2019 of the learned Single Judge stands modified in the above terms. The appeals and applications are disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 08, 2019

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