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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 125/2020 and CM APPL. 4296/2020, 4299/2020**
ASHOK KUMAR & ORS Petitioners
Through: Mr. Jaspreet Singh and Mr. Ishpreet
Singh, Advocates (M: 9899641617).

versus

RAM SINGH Respondents

40 Through: None.
+ WITH

+ **CM(M) 129/2020 and CM APPL. 4455/2020, 4456/2020**
MOHINI & ORS Petitioners
Through: Mr. Jaspreet Singh and Mr. Ishpreet
Singh, Advocates (M: 9899641617).

versus

RAM SINGH Respondents

43 Through: None.
+ AND

+ **CM(M) 133/2020 and CM APPL. 4463/2020, 4464/2020**
KAMLA & ORS Petitioners
Through: Mr. Jaspreet Singh and Mr. Ishpreet
Singh, Advocates (M: 9899641617).

versus

RAM SINGH Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **04.02.2020**

1. Advance copies of the petitions are stated to be served upon the Respondent's/Plaintiff's counsel by hand. The endorsement is also available

on the Court record. None appears for the Respondents.

2. The present petitions challenge the impugned order dated 30th November, 2019 by which the defence of the Petitioners herein/Defendants in the suit (*hereinafter 'Tenants'*) has been struck off. The background is that a suit for possession and permanent injunction was filed by the Respondent/Plaintiff – Ram Singh (*hereinafter 'Landlord'*) against the Tenants. Summons were issued in the suit in August, 2019 and the Petitioners were served in August, 2019. On 27th September, 2019 which was the returnable date, the Presiding Officer was on leave, however, the Tenants had prepared an application under Order VII Rule 11CPC and the same was to be filed before the Court on the said date. On the next date, i.e. 30th November, 2019, an application under Order VIII Rule 1 CPC was filed by the Landlord. Considering the said application, since the written statement(s) were not on record and only an application under Order VII Rule 11 CPC was filed by the Tenants, the Trial Court has struck off the defence of the Tenants.

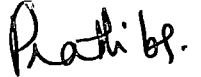
3. Ld. counsel for the Tenants submits that in fact the affidavit in the application under Order VII Rule 11 CPC was attested on 27th September, 2019 and there was no intention to delay the matter. It is his submission that the period of 120 days has not lapsed and no opportunity was granted to reply to the application under Order VIII Rule 1 CPC which was in fact presented on the same date, when the impugned order was passed.

4. The Court has perused the two orders i.e. 27th September, 2019 and 30th November, 2019. Admittedly, the Tenants were served on 19th August, 2019 and a perusal of the Order VII Rule 11 CPC application shows that defences were intended to be raised by the Tenants. The affidavit in support

of the application is also attested as of 27th September, 2019. Thus, it cannot be said that Tenants were not diligent in pursuing the matter. For whatever reasons the Tenants were under the impression that the application under Order VII Rule 11 CPC would be decided first, before filing of the written statement. Considering that the period of 120 days was yet to be exhausted from the service of the summons, subject to payment of Rs. 5,000/- costs to the Landlord in each of the matters, the Tenants are permitted to file the written statement(s) within one week with advance copies to the Landlord.

5. The costs shall be tendered on or before the next date before the Id. Trial Court i.e. 10th February, 2020. Subject to the costs being tendered, the written statement shall be taken on record and the suit shall be proceeded with in accordance with law.

6. The petitions with all pending applications are disposed of. *Dasti*.


PRATHIBA M. SINGH, J.

✓ FEBRUARY 04, 2020
MR/A.S.