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

+ **CM(M) 1256/2018 & CM APPL. 42908/2018**

SUBODH GUPTA & ANR

..... Petitioners

Through: Mr. Om Prakash, Mr. R.R. Pathak and
Mr. Pradeep Kr. Tripathi, Advocates.
(M:9810794902)

versus

SURAJ KAPUR & ORS

..... Respondents

Through: Mr. Rohan Malik, Advocate for R-1
to 3. (M:9711790690)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **27.01.2020**

The only issue in this petition is whether while deciding the application under Order IX Rule 7 CPC, the Respondents/Defendants (*hereinafter, "Defendants"*) could have been permitted to file the written statement without even a prayer being there.

On 8th May, 2019, the impugned order dated 4th August, 2018 was stayed with the following observations:

"Learned counsel for the petitioner states on 13.02.2018 the right to file written statement of all the defendants was closed. Thereafter on 19.04.2018 none of the defendants appeared and were proceeded ex parte. On 07.06.2018 the defendants filed application under Order 9 Rule 7 CPC for setting aside the ex parte order. Vide order dated 04.08.2018 the ex parte order was set aside but however without any prayer for setting aside order dated 13.02.2018 the defendants were directed to file the written statement which order is per se illegal and was never called for.

In the circumstances, order dated 04.08.2018 is stayed till further orders.

Since no one appears on behalf of the respondent list for disposal on 11.09.2019.

Copy of the order be given dasti under signature of the Court Master.”

During the pendency of this petition, the Defendants have filed their written statement. The replication has also been filed. It is stated that the Plaintiff's evidence has also commenced and PW-1 has also been cross-examined. The remaining evidence is continuing.

Considering all these facts and the subsequent events which have taken place, the written statement of the Defendants shall remain on record, subject to payment of Rs.50,000/- as costs to the Petitioner. The same shall be paid on or before the next date in the Trial Court. The Trial Court proceedings shall continue in accordance with law.

With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 27, 2020

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