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

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Date of Decision: 20.04.2022

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FAO(OS) 81/2019

MADHVI LIJHARA

..... Appellant

Through: Mr Jai Sahai Endlaw and Mr
Ashutosh Rana, Advs.

versus

MADHU UJLA

..... Respondent

Through: Mr Bhagat Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE POONAM A. BAMBA

[Physical Court hearing/hybrid hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

FAO(OS) 81/2019 & CM APPL. 52898/2019

1. The above-captioned interlocutory application i.e., CM APPL. 52898/2019 has been filed on behalf of the respondent, in effect, for dismissal of the appeal.

1.1. Mr Bhagat Singh, who appears on behalf of the respondent, says that the above-captioned application has been filed, as certain aspects were not brought to the notice of the Court, which, *inter alia*, include the fact that the issues have been framed, and witnesses testimonies have been filed in the underlying suit i.e., CS(OS) 1472/2015. In other words the assertion is that these crucial facts were not disclosed by the appellant.

2. Mr Jai Sahai Endlaw, who appears on behalf of the appellant, says there was no concealment. It is Mr Endlaw's submission that the issues were framed in the suit on 23.04.2019, and the appeal was filed prior to that date.

2.1. While we accept Mr Endlaw's contention in that behalf, we are of the



view that the matter has reached the stage of evidence, and therefore, now, to permit the non-applicant/appellant to file a replication to the counter-claim will not be in order.

3. Via the impugned order dated 08.02.2019, the Learned Single Judge had foreclosed the non-applicant/appellant's right to file replication to the counter-claim, having regard, *inter alia*, to the fact that two extensions were granted for filing the same, *via* orders dated 22.05.2018 and 10.08.2018.

4. Having regard to the impugned order and the fact that the suit has reached the stage of trial, we are not inclined to interfere with the impugned order.

4.1. To our minds, there is no error with regard to any facet of law in the impugned order. The Learned Single Judge has employed his discretion, bearing in mind the facts and circumstances of the case.

5. The appeal is, accordingly, dismissed. Consequently, the same result will follow in the above-captioned application as well. CM APPL. 52898/2019 is, accordingly, dismissed.

6. Notwithstanding our observations made hereinabove, it goes without saying that the appellant would be entitled to press ahead with her evidence, *albeit*, in accordance with the pleadings already on record.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 20, 2022/p

[Click here to check corrigendum, if any](#)