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C.O. 3962 of 2022
With
CO 3959 of 2022
CO 3960 of 2022

Messrs. M. R. Singhwi & Company & Ors.
Vs
Charu Diesels LLP & Anr.

Mr. Rajarshi Dutta,
Mr. Sayantan Bose,
Mr. S Raut,
Ms. Ankita Choudhury. ... for the petitioners

Mr. Aniruddha Chatterjee,
Mr. Kuldip Mallick,
Mr. K. Paul Choudhury
..... for the opposite parties.

On the prayer of both the parties, the revisional applications are taken up together for a common law point being involved in this case.

At the very threshold, the learned advocate appearing for the petitioners submits that he will not pursue any more, application under Order 7 Rule 11 C.P.C., as in the written statement, if allowed to be filed, the points taken in Order 7 Rule 11, may be incorporated to put up defence of defendants.

While assailing the impugned order dated 3rd November, 2022 passed by learned Civil Judge (Senior Division), 2nd Court, Alipore in Title Suit No. 674 of 2022, Mr. Rajarshi Dutta, learned advocate appearing for the petitioners submits that the court below has declined to give an opportunity to file written statement, as the suit has already been set for *ex parte* hearing.

It is also submitted by the learned advocate for the petitioners that there has been no appropriate service of summons upon the defendants providing a chance to response to the summons. The right of defence, according to the petitioners, could not be put up for the faulty of service of summons.

There has been a rejection of a prayer by the impugned order under Order 7 Rule 11 C.P.C. together with other two prayers proposed by the petitioners.

Mr. Aniruddha Chatterjee, learned advocate for the opposite parties denies with the defect in the service of summons, as advanced by the learned advocate for the petitioners, submitting that there has been appropriate service of summons, and the opportunity to file written statement could not be availed of by the petitioners, for the reasons best known to the petitioners.

Mr. Chatterjee further submits that since there is some restriction mentioned with regard to the filing of the written statement Under Order 8 Rule 1 C.P.C, the same must be taken in view, while making consideration of filing of written statement, as proposed to be made by the opposite parties.

Having considered the submission of both sides, it appears that there has been previous rejection of

Order 7 Rule 11 C.P.C., which as per submission disclosed by the learned advocate for the petitioners, the same will not be pursued anymore.

The points disclosed in the Order 7 Rule 11, though rejected, may once again re-agitated in the form of defence, disclosing the same in the written statement. Though there has been some laches disclosed on the part of the petitioner, as per submission of Mr. Chatterjee, but that should not be treated to be fatal so as to shut the defence of the defendants.

The revisional applications stand disposed of upon setting aside the impugned orders, giving liberty to the petitioners to file written statement with a show cause application praying for acceptance of the same, upon supplying a copy well in advance to the opposite parties within 10 days from the date of communication of this order by the this court below.

The acceptance of the written statement may be considered, if necessary, upon saddling some compensatory costs, consequent to the harassment caused to the plaintiff for non-filing of the written statement.

This order is passed without prejudice to rights and contentions of the parties.

(Subhasis Dasgupta, J)

