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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.11.2023

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FAO (COMM) 79/2023 & CM APPL. 15459/2023

KIRTI

..... Appellant

versus

TATA POWER DELHI DISTRIBUTION LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Vivek Kumar, Advocate

For the Respondent: Mr. Manish Srivastava, Mr. Moksh Arora and Mr. Santosh Ramdurg, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 15458/2023 (exemption)

Allowed, subject to all just exceptions.

CM APPL. 15460/2023 (condonation of delay) & CM APPL. 15461/2023 (condonation of delay)

For the reasons stated in the applications, the applications are allowed.

The applications are disposed of.

FAO (COMM) 79/2023

1. Appellant impugns order dated 29.07.2022 whereby an application filed by the appellant under Order 7 Rule 11 of the CPC has been dismissed and simultaneously the defence of the appellant has been struck off holding the written statement to be beyond time.
2. Learned trial court has dismissed the application under Order 7 Rule 11 of the CPC holding that there was no patent lacuna in the plaint or anything contained in the plaint which may suggest that it is without any cause of action against the defendant.
3. The concerned court also found that the written statement was filed beyond the statutory period of 120 days and as such the defence of the appellant was struck off.
4. The contention of learned counsel for the appellant with regard to the application under Order 7 Rule 11 of the CPC is purely on the merits of defence of the appellant. It is settled position of law that at the time of consideration of an application under Order 7 Rule 11 of the CPC, the defence or the plausible defence of the defendant is not to be considered and the plaint as a whole has to be examined to ascertain as to whether the plaint discloses a cause of action or not.
5. In the facts and circumstances of the case, it cannot be said that the plaint does not disclose a cause of action and consequently, we find no infirmity in the order of the trial court rejecting the application under Order 7 Rule 11 CPC.
6. In view of the above, the appeal, in so far as, it impugns order

dated 29.07.2022 rejecting the application under Order 7 Rule 11 CPC is concerned, does not have any merit.

7. With regard to the delay in filing the written statement, it is noticed that on 25.09.2021 respondent/plaintiff had sought time to file on record the original file of the concerned consumer number. Subsequently on 31.01.2020, it was clarified by learned counsel that the documents were already part of the record.

8. Learned counsel for the appellant contends that appellant was prosecuting her application under Order 7 Rule 11 CPC and as such there was some delay in filing the written statement.

9. Learned counsel for the respondent submits that in view of expeditious disposal of the Suit, he has no objection in case the written statement is taken on record subject to terms.

10. In view of the above, the written statement filed by the appellant is taken on record subject to payment of cost of Rs. 20,000/-. The appeal is accordingly disposed of in the above terms. The cost be paid on the next before the trial court.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 16, 2023

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