



2024 : DHC : 787-DE



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 7/2024, CM APPL. 3790/2024**

KOMMAN PEOPELE WELFARE SOCIETY (REGD)

..... Appellant

Through: Mr. Vibhor Garg, Mr. Aditya Bhardwaj, Mr. Keshav Tiwari and Ms. Ishita Mehta and Ms. Varada Bhutani, Advocates.

versus

SUKHBIR SINGH & ANR.

..... Respondents

Through: Mr. S.K. Chaturvedi, Ms. Ankita Agrawal and Ms. Sheereen, Advocates

+ **FAO(OS) 8/2024**

KOMMAN PEOPELE WELFARE SOCIETY (REGD)

..... Appellant

Through: Mr. Vibhor Garg, Mr. Aditya Bhardwaj, Mr. Keshav Tiwari and Ms. Ishita Mehta and Ms. Varada Bhutani, Advocates.

versus

SUKHBIR SINGH & ANR.

..... Respondents

Through: Mr. S.K. Chaturvedi, Ms. Ankita Agrawal and Ms. Sheereen, Advocates

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Date of Decision: 31st January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, ACJ : (ORAL)

CM APPL. 3791/2024 in FAO(OS) 7/2024 (for exemption)

CM APPL. 3794/2024 in FAO(OS) 8/2024 (for exemption)

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By: Rashmi Dubas
Signing Date: 02.02.2024
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Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

FAO(OS) 7/2024 & CM APPL. 3790/2024

FAO(OS) 8/2024

1. The present appeals have been filed by the Plaintiff against the orders passed in the Civil Suit bearing CS (OS) No. 45/2022.
 - 1.1. In FAO (OS) 7/2024, the Appellant has challenged the order dated 6th March, 2023, whereby, the learned Single Judge allowed the OA No. 25/2023 and condoned the delay in filing the written statement, subject to payment of costs of Rs. 30,000/-.
 - 1.2. In FAO (OS) 8/2024, the Appellant has challenged the order dated 13th December, 2023, passed by learned Single Judge, closing its right to file the replication after recording that no replication has been filed.
2. The learned counsel for the Appellant in FAO(OS) 8/2024 states that there is an error apparent on the face of record in the order dated 13th December, 2023, since the replication along with affidavit of admission/denial of documents stood filed on 23rd October, 2023 and 26th October, 2023, respectively.
3. Learned counsel for the Respondent/defendant in FAO(OS) 8/2024 has entered appearance. He states that he has no objection to the appeal i.e., FAO (OS) 8/2024, being allowed. He states that however, the FAO (OS) 7/2024 is not maintainable as the costs of Rs. 30,000/-, imposed by the learned Single Judge vide order dated 6th March, 2023, stands paid. In reply, learned counsel for the Appellant in FAO(OS) 7/2024 fairly admits that he has received the costs of Rs. 30,000/-.
4. After some arguments, learned counsel for the Respondent in



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FAO(OS) 8/2024 fairly concedes that FAO (OS) 8/2024 can be allowed in view of the error apparent. In reply, learned counsel for the Appellant in FAO(OS) 7/2024 states that he as well has instructions to withdraw FAO (OS) 7/2024 in view of the Appellant's replication being allowed. He further states that he will refund the cost of Rs. 30,000/- received from the Respondent in view of the delay in filing the replication. The said statement is taken on record and the Appellant is directed to remit the said amount in two (2) weeks.

5. Accordingly, FAO (OS) 8/2024 is allowed and order dated 13th December, 2023, is set aside. It is directed that the replication and the affidavit filed by the Appellant shall be taken on record. Pending applications stand disposed of.

6. Further, FAO (OS) 7/2024 is dismissed as withdrawn. Even otherwise, it is settled law that the said appeal could not have been maintained by the Appellant after having accepted the costs of Rs. 30,000/- (Re. *Hemant Verma vs. Nazibulla Khan & Anr.*¹). It is directed that the affidavit of admission/denial of documents filed by the Respondents shall be taken on record. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 31, 2024/rhc

¹ 2017 SCC OnLine Del 11184