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

+ **FAO(OS) 47/2024 & C.M.Nos.22246-22247/2024**

MRS. SAROJ NIJHAWAN & ORS. Appellants

Through: **Mr.Rakesh Saini, Advocate.**

versus

MRS. SEEMA CHHABRA & ORS. Respondents

Through: **None**

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Date of Decision: 16th April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned interim order dated 06th March, 2024 passed by the learned Single Judge in I.A. 4361/2024 in CS(OS) 738/2022, whereby the application filed by the Appellants-Plaintiffs seeking condonation of delay of One Hundred and Twenty Nine (129) days in filing the replication to the written statement filed by Respondent nos.1 and 2/Defendant nos.1 and 2 was dismissed as it was filed beyond the period of forty five (45) days as prescribed in Rule 5 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018 (the "Original Side Rules").

2. Learned counsel for the Appellants states that vide order dated 18th August, 2023 passed in the subject suit, the written statements filed by the



Respondent nos.1 and 2/Defendant nos.1 and 2 were taken on record after condoning a delay of seventy two (72) and one hundred and thirty nine (139) days respectively, primarily on the ground that parties were negotiating a settlement in mediation. He thus contends that the delay in filing the replication on account of mediation ought to be condoned too.

3. Having perused the paper book, this Court finds that the written statements in the present case were taken on record after the learned counsel for the appellants/plaintiffs had given their 'no objection' to the same being taken on record. This Court is also of the view that even if the matter was pending before mediation, the appellants/plaintiffs should have filed their replication without prejudice to their rights and contentions.

4. Further, Rule 5 of Chapter VII of the Original Side Rules has been held to be mandatory by a predecessor Division Bench of this Court in ***Ram Sarup Lugani vs. Nirmal Lugani (2020 SCC OnLine Del 1353)***.

5. Keeping in view the aforesaid, the present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 16, 2024

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