

CS (COMM) No.: 127/24
Suprajit Engineering Ltd.

v.

Dalip Kumar

06.12.2024

Present: Mr. Sanchay Malhotra, Advocate for the plaintiff through
Cisco Webex Meeting.
Mr. Mridul Bansal, Advocate for the defendant.

File perused. On 04.10.2024 a replication to the written statement of the defendant was sought to be filed on behalf of the plaintiff along with an application under section 151 of CPC for condonation of delay of 25 days in filing of the replication; and on 07.10.2024, filing of the said replication was opposed by counsel for the defendant on the ground that since the said replication was sought to be filed after 45 days of filing of the written statement, therefore, the same could not be taken on record. On 07.10.2024, since counsel for the defendant sought time to address the court with the aid of some judgments, the matter was posted for consideration on the point of filing of the replication for 20.11.2024. Subsequently, on 20.11.2024 at the request made on behalf of the plaintiff the matter was posted for today.

2. I have heard counsel for the parties on the point of filing of the replication and have gone through the material on record carefully.

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3. Having drawn the attention of the court on the record of case, Rule 5 of the Delhi High Court (Original Side) Rules, 2018, Atlantech Online Services Pvt. Ltd. and another v. Google India Pvt. Ltd. and another, 2023 SCC OnLine Del 5476, OK Play India Pvt. Ltd. v. A.P. Distributors and another, 2021 SCC OnLine Del 4809 and Ram Sarup Lugani and another v. Nirmal Lugani and others, 2020 SCC OnLine Del 1353 it is submitted by counsel for the defendant that by order dated 06.7.2024 passed by this court the defendant was granted time to file the written statement, and by the same order liberty was granted to the plaintiff to file replication to the written statement. It is further submitted by counsel for the defendant on 05.8.2024 the written statement was filed by the defendant through e-filing and copy of the same was supplied to the plaintiff. It is further submitted by counsel for the defendant that on 04.09.2024 thirty days time to file the replication expired, but no replication was filed on behalf of the plaintiff. It is further submitted by counsel for the defendant that by order dated 17.09.2024 at the request of counsel for the plaintiff further time was granted to file replication within statutory period, but the plaintiff failed to do so within a period of 45 days from the date of receiving the copies of the written statement. It is further submitted by counsel for the defendant that the replication in the present case was sought to be filed

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on behalf of the plaintiff on 03.10.2024, after passing of more than 45 days with an application to condonation of delay of 25 days in filing the replication. It is further submitted by counsel for the defendant that the replication can not be taken on record, therefore, the plea of the plaintiff to take the replication on record be rejected.

4. Per contra, it is submitted by counsel for the plaintiff that the plaintiff was gathering the information required in the present case to file the replication, therefore, due to unforeseen and unavoidable circumstances the replication could not be filed within the stipulated period and there has been delay of 25 days in filing the replication. It is further submitted by counsel for the plaintiff that the delay in filing the replication is neither intentional nor deliberate. It is further submitted by counsel for the plaintiff that the delay in filing the replication may be condoned and the replication sought to be filed on 04.10.2024 be taken on record.

5. I have given by thoughtful consideration to the submissions made on behalf of the parties.

6. As per the record, the present suit was received in this court on 20.01.2024, and after passing of ex parte injunction order in favour of the plaintiff, summons were ordered to be issued against the defendant on 23.01.2024. After service of summons, written statement on behalf of

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defendant Dalip Kumar was filed on 06.08.2024, and thereafter, the matter was posted for filing of replication and framing of issues etc. On 17.09.2024 time was sought on behalf of the plaintiff for filing of replication, and the request made on behalf of the plaintiff was strongly opposed by counsel for the defendant. On 17.09.2024 the plaintiff was allowed to file the replication within the statutory period with affidavit of admission/ denial of documents. The replication, however, was sought to be filed on 04.10.2024 with the application for condonation of delay, and having receipt the copies of the replication and the application counsel for the defendant on 07.10.2024 made submissions that the replication could not be taken on record.

7. Rule 5 of the Delhi High Court (Original Side) Rules 2018, whereupon strong reliance has been placed by the learned counsel for the defendant, reads as follows:-

5. Replication.— The replication, if any, shall be filed within 30 days of receipt of the written statement. If the Court is satisfied that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons in filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days but not thereafter. For such extension, the plaintiff shall be burdened with costs, as deemed appropriate. The replication shall not be taken on record, unless such costs have been paid/ deposited. In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before the Court. An advance copy of the replication together with legible copies of all documents in possession and power of

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plaintiff, that it seeks to file along with the replication, shall be served on the defendant and the replication together with the said documents shall not be accepted unless it contains an endorsement of service signed by the defendant/ his Advocate.

8. In Ram Sarup Lugani's case (supra), while interpreting Rule 5 of the Delhi High Court (Original Side) Rules 2018 the Hon'ble Delhi High Court held as follows:

31. In view of the aforesaid discussion, it is held that in case of any inconsistency, the provisions of the Delhi High Court (Original Side) Rules, 2018 will prevail over the Civil Procedure Code. The inherent powers contemplated in Rule 16 are not to be exercised to overcome the period of limitation expressly prescribed in Rule 5 for filing the replication. Nor can Rule 5 be circumvented by invoking any other provision or even the inherent powers of the court, contrary to the scheme of the Rules. The phrase, "but not thereafter" used in Rule 5 makes it crystal clear that the Rule is mandatory in nature and the court cannot permit the replication to be taken on the record after the plaintiff has exhausted the maximum prescribed period of 45 days. Any other interpretation will result in causing violence to the DHC Rules.

9. The law laid down by the Hon'ble High Court in Ram Sarup Lugani's case (supra) has been followed in Atlantech Online Services Pvt. Ltd.'s case (supra).

10. In OK Play India Pvt. Ltd.'s case (supra) it has been held by the Hon'ble High Court that the Delhi High Court (Original Side) Rules 2018 are also applicable to the District Courts, including Commercial Courts.

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11. In the present case, it has been admitted on behalf of the plaintiff that there is delay of 25 days, above the time prescribed by the Hon'ble Delhi High Court, in filing the replication, therefore, in the light of the law laid down in Ram Sarup Lugani's case (supra) and OK Play India Pvt. Ltd.'s case (supra) the delay in filing the replication cannot be condoned in exercise of powers under section 151 of CPC and the replication cannot be taken on record.

12 In view of above discussion, the application under section 151 of CPC made on behalf of the plaintiff for condoning the delay in filing the replication is dismissed. The plea of the plaintiff to take on record the replication, sought to be filed on 04.10.2024, is declined. The said replication shall not be filed.

Put up for consideration on the application for temporary injunction on 17.01.2025.

(MANOJ KUMAR-1)
District Judge- Commercial Court-05
(Central)/ THC/ Delhi/ 06.12.2024