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

+ CS(OS) 73/2019, I.A. 1728/2019, I.A. 17386/2019, I.A. 17387/2019

SH. DEEPAK TARA Plaintiff
Through: Mr. R.K. Bhardwaj, Adv.

versus

SH. BAIJ NATH TARA & ORS. Defendants
Through: Mr. Rajat Aneja and Ms. Aditi
Shastri, Advs. for D-2 & D-4

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER
20.02.2023

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O.A. 150/2019

1. Learned counsel appearing in support of the instant Chamber Appeal lays reliance on a judgment rendered by a learned Judge of the Court in **Amrendra Dhari Singh vs. R.C. Nursery Private Limited** [Neutral Citation Number: 2023/DHC/000150].

2. The submission resting on the aforesaid decision was that the language employed in Rule 4 as falling in Chapter VII of the Delhi High Court (Original Side) Rules, 2018 [Rules] is distinct and different from that used in Rule 5 of the Rules. In light of the above, it was sought to be contended that a party would have the right to proffer its defense even after the maximum period in Rule 4 has expired in light of the discretion vested in the Registrar to either close that right or accord permission.

3. It becomes pertinent to note that both Rules 4 and 5 use the phrase “*but not thereafter*” and thus appearing to indicate the terminal date beyond which a written statement or a replication cannot be entertained. The usage of the expression “*but not thereafter*” was



noticed by the Division Bench of the Court in **Ram Sarup Lugani and Another vs. Nirmal Lugani and Others** [2020 SCC OnLine Del 1353] to hold that it clearly did not envisage any extensions being granted beyond the maximum period as prescribed in Rule 5 of the Rules. In fact, **Lugani** holds that the phraseology employed in the said Rule, is akin to Section 34 of the Arbitration and Conciliation Act, 1996 and thus putting in place a special period of limitation which is liable to be considered as inviolate.

4. The Court also notes that while the Rules may seek to adopt provisions of the Civil Procedure Code, 1908, they do, at least insofar as the aforementioned Rules are concerned, adopt measures different and distinct therefrom. **Amrendra Dhari Singh**, however, takes the position that the penultimate part of Rule 4 places that provision in a position which is slightly distinct from Rule 5. It was in the aforesaid light that it was contended that the discretion which stands conferred on the Registrar to either close the right of defense or to refrain from doing so, would appear to indicate that the maximum period as stipulated in the previous parts of Rule 4 is not mandatory.

5. Since the learned Judge in **Amrendra Dhari Singh** has also referred to the earlier decision rendered by the Division Bench on 28 January 2020 in FAO(OS) 2/2020 titled **Esha Gupta vs. Rohit Vig** and learned counsel appearing for the Appellant seeks to rely upon the same, let a copy thereof be also placed for the consideration of the Court on the next occasion.

6. Let the matter be called again on 13.04.2023.

YASHWANT VARMA, J.

FEBRUARY 20, 2023

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