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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
I.As. 19590/2022, 19591/2022 & O.A. 62/2022
IN
+ CS(OS) 115/2020
NAWABUDDIN Plaintiff
Through: Mr. M. Arshyan, Adv.

versus

SH. SALAHUDDIN & ORS. Defendant
Through: Mr. Alamgir, Adv. for D-1, D-2 &
D-4
Mr. A. J. Khan, Adv. for
D-3/Appellant

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **24.11.2022**

I.A. 19591/2022

Allowed, subject to just exceptions.

Application disposed of.

I.A. 19590/2022

For the reasons stated in the application, delay of 19 days in filing the appeal is condoned.

Application disposed of.

O.A. 62/2022

1. This chamber appeal has been filed challenging the order dated August 30, 2022 whereby the learned Joint Registrar has closed the right of the appellant, being the defendant No.3, to file the written statement on the ground that the statutory period for filing the written statement has expired.



2. Having seen the impugned order dated August 30, 2022 and also the conclusion arrived at by the learned Joint Registrar that even in terms of the judgment of the Supreme Court in *Suo Moto Writ Petition No. 3/2020*, the time has expired the right of the defendant No.3 (appellant) to file the written statement cannot be allowed. No submission has been made to state that the conclusion arrived at by the learned Joint Registrar is perverse or contrary to record. The law in terms of the Judgment in the case of **Sh. Gautam Gambhir v. M/s Jai Ambay Traders & Ors., CS(OS) 149/2018** and connected matter, dated August 6, 2020 being clear, wherein paragraphs 54 and 70 read as under, no fault can be found with the impugned order dated August 30, 2022:

“54. The said interpretations hold good for Rule 4 of Chapter VII of the Rules of 2018, which also contemplates extension of time for filing written statement beyond 30 days, for a ‘period not exceeding’ 90 days ‘but not thereafter’. Moreover, the Rules of 2018 came into effect after the Commercial Courts Act was notified and it can very well be presumed that a total of 120 days (30+90) was granted for filing the written statement in the Rules of 2018, drawing spirit from the upper limit amongst the time periods provided in Order VIII Rule 1 and its proviso (applicable to commercial suits), to make it applicable to all suits filed in the Original Side of this Court.

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70. Further, when I have already on an interpretation of Rule 4 of Chapter VII of the Rules of 2018 concluded that filing of written statement within a period of 120 days is mandatory, it must follow



that the period of 45 days in Rule 5 of Chapter-VII is also mandatory in nature, otherwise, it follows the time limit for filing written statement is mandatory but not for replication; in fact without any time limit. Such cannot be the intention of the Rule making authority. The lessor period for replication is prescribed knowing well, that the same has to be filed by the plaintiff / claimant, who has already taken a stand in the plaint and the purpose of the replication is only to clarify / answer, such averments in the written statement which are at variance with the stand in the plaint.”

3. The chamber appeal is dismissed.

V. KAMESWAR RAO, J.

NOVEMBER 24, 2022/ds