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

+ **CS(OS) 318/2023**

RAJIV NARULA

.....Plaintiff

Through: Mr Rakesh Talukdar and Mr Ashray
Chopra, Advocates

versus

SUMITRA NARULA & ORS.

.....Defendants

Through: Mr. Bhavishya Mehra, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **07.10.2024**

I.A. 41475/2024 (seeking condonation of delay)

O.A. 169/2024 (under Order II Rule 5 of Delhi High Court Rules against the order dated 11.01.2024)

1. This chamber appeal has been filed impugning the order dated 11.01.2024, whereby the right of defendant nos. 1 to 3 to file written statement has been closed.
2. I.A. 41475/2024 has been filed seeking condonation of delay of 204 days in filing the aforesaid chamber appeal.
3. Learned counsel for the appellants/defendant nos. 1, 2 and 3 states that it is a matter of record that written statement has not been filed within the statutory period of limitation of 30 days. He states that the written statement could not be filed within the grace period of 90 days, which expired on 21.11.2023 for the reasons stated in the appeal. He states that the written statement has been filed on 22.08.2024, however, the same has been returned under objections.



4. In reply, learned counsel for the respondent/plaintiff states that in view of the judgment passed by the Division Bench of this Court in **Delhi Gymkhana Club Limited v. Col Ashish Khanna SM Retd. and Ors.**¹ and by the coordinate bench in **Manhar Sabharwal v. High Court of Delhi and Ors.**² this Court is empowered to extend the period of 30 days for filing written statement by further 90 days, but not beyond the overall period of 120 days. He states, therefore, that the defendants' right to file written statement has been rightly closed by the learned Joint Registrar (J) vide impugned order dated 11.01.2024.

5. This Court has heard the submission of the learned counsel for the parties and perused the record.

6. The appellants/defendants admit that summons were duly served on 24.07.2023.

7. In the appeal, the appellants/defendants have contended that they were unable to file the written statement on account of medical issues, financial issues and lack of communication with the previously engaged counsel. It is further stated that since parties were referred to mediation by the Court, the appellants/defendants failed to take steps to draw up a written statement.

8. The 30 days for filing the written statement as per Rule 2 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 ('DHC Original Side Rules') expired on 23.08.2023 and the grace period of 90 days as per Rule 4 of Chapter VII thereafter expired on 21.11.2023. The order dated 24.07.2023 issuing summons as well directed the defendants to file their written statement within 30 days and the same also finds mention in the summons

¹ 2024:DHC:7524-DB

² 2024:DHC:6406



itself. The defendants thus had sufficient notice as regard the requirement to file the written statement within the time granted.

9. The validity of Rule 4, Chapter VII of DHC Original Side Rules has been upheld by the Division Bench in **Manhar Sabharwal** (supra), wherein the operative portion of the judgment reads as under:

“14. Section 7 of the DHC Act confers authority on the High Court to make Rules with respect to practice and procedure for the exercise of its original civil jurisdiction. The words „practice and procedure“ have a very wide connotation, and will include the power to regulate and specify the method, by which the court will conduct its proceedings. (See: Akash Gupta Vs. Frankfinn Institute of Airhostess Training, 2006 SCC OnLine Del 66)

15. The position that emerges is that Rule 4 of Chapter VII of DHC Original Side Rules, has been framed under Section 129 of the CPC and Section 7 of the DHC Act. Section 129 of the CPC empowers the High Court to regulate its own procedure in exercise of its civil jurisdiction. Section 7 of the DHC Act further empowers this Court to make Rules and Orders with respect to practice and procedure for exercise of its ordinary original civil jurisdiction. The DHC Original Side Rules, being special law, will prevail over the CPC, and have an overriding effect over the general provisions of the CPC.

16. The plea raised by the petitioners regarding Rule 4, Chapter VII of the DHC Original Side Rules, being discriminatory in nature, is totally misplaced. The very distinction, between procedures of the High Court and Civil Court, is found ingrained in Section 129 of the CPC. The said Section recognizes special Rules for the High Court, and thereby, itself makes a distinction between High Court and Civil Court. When the CPC itself envisages distinction in the practice and procedure between High Court and Civil Court, the Rules framed thereunder, cannot be challenged on the anvil of discrimination.

17. The High Court is within its authority and jurisdiction to frame Rules of practice and procedure as to its original civil procedure. The very fact that such an authority has been conferred on the High Court, and such a provision exists in the CPC, which confers such



authority on the High Court, envisions difference in the Rules of practice and procedure between a High Court, and a Civil Court.

18.1 The reliance by the petitioners on the judgment in the case of Kailash Vs. Nanhku (supra) , is totally misplaced. The said judgment was in the context of interpretation of Order VIII Rule 1 of CPC. Rule 4, Chapter VII of DHC Original Side Rules was not a subject matter of discussion in the said judgment. Even otherwise, Rule 4, Chapter VII of DHC Original Side Rules itself was introduced only in the year 2018. Consequently, in view of Section 129 of CPC, the Original Side Rules of the High Court prevail over the provisions of the CPC.

18.2 The position in the present case is totally different as Section 129 of CPC, which empowers the High Court to frame its own Original Side Rules, is a non-obstante clause and itself excludes the operation of other provisions of the CPC, while conferring jurisdiction on the High Court to frame its Rules. Thus, in case of any inconsistency between the provisions of the DHC Original Side Rules and the provisions of the CPC, the DHC Original Side Rules shall prevail. The judgment relied upon by the petitioners is not applicable to the facts and circumstances of the present cases.

18.3 Therefore, Rule 4 Chapter VII of DHC Original Side Rules cannot be challenged on the ground of being contrary to the aforesaid judgment, which was delivered in the context of Order VIII Rule 1 CPC. The amended provisions of Order VIII Rule 1 CPC, would not apply to the suits on the Original Side of the High Court, and such suits would continue to be governed by the High Court Original Side Rules.

19. Reliance by the petitioners on the judgment in the case of Raj Kumar Yadav (supra) , to contend that statutory period of limitation cannot be taken away by the Rules framed by the High Court governing its procedure, is again, misconceived. The said judgment was rendered in an Election Petition, wherein, the High Court Rules in the said case stipulated that an Election Petition could be filed only in the open court. In the said case, the Election Petition was presented ten minutes after the Judge had retired to his chamber. The Representation of People Act, 1951 stipulated limitation under Section 81 of the said Act, to expire on the 45th day from the date of election. The word „day“ was interpreted to cover a period of twenty four hours, to include period till midnight. It



was in this context that it was held that the limitation period would continue till midnight of the last day, and non-acceptance of the Election Petition on the ground of its presentation after the Judge had risen for the day, was rejected.

20. Similarly the judgments in the cases of Salem Advocate Bar Association (supra) and Sambhaji (supra), are not applicable to the present cases, as the said judgments were dealing with Order VIII Rule 1 of CPC. As discussed in the preceding paragraphs, the operation of the said provision to Original Side of this Court, stands excluded and the DHC Original Side Rules, shall operate to govern the practice and procedure of the Original Side of this Court.

21. Section 129 CPC expressly gives the power to the High Court to make Rules, notwithstanding the provisions of the CPC, meaning thereby, the High Court is in its authority to frame Rules that may be contrary to other provisions of the CPC. Therefore, relying on judicial interpretations of the provisions of the CPC, to challenge Rule 4 Chapter VII of DHC Original Side Rules, is totally fallacious.

22. The petitioners have not challenged Section 129 CPC, which refers to the Rules framed by a High Court, having overriding effect over the provisions of the CPC, in view of the non-obstante clause contained therein. The petitioners have also not challenged Section 7 of the DHC Act that empowers the High Court to make Rules and Orders, with respect to Practice and Procedure for exercise of its ordinary original civil jurisdiction. Thus, when plenary powers of this Court to frame the Original Side Rules, are recognized and accepted, the petitioners have not been able to establish any case that the exercise of such powers by this Court, and the Rules framed thereunder, are unconstitutional in any manner.

23. For the foregoing reasons, the present petitions are held to be devoid of any merits. Accordingly, the same are dismissed, along with the pending applications.”

(Emphasis Supplied)

10. Subsequently, another Division Bench in **Delhi Gymkhana Club** (supra) while considering Rule 4, Chapter VII of DHC Original Side Rules



has held that the Court cannot extend the time for filing written statement beyond 120 days from the date of service. The relevant portion of the judgment reads as under:

“19. Rule 4 of Chapter VII of DHC Original Side Rules being mandatory in nature the 120 days limitation period stipulated under the said Rule would begin from 25th March, 2022 i.e., the date when summons was issued and duly accepted on behalf of the Appellant Club.

20. It is noted that on the date on which the new management is stated to have appeared for the first time before the Court in the concerned suit i.e., 31st May, 2022, the outer period of limitation of 120 days had not been exhausted. Thus, the Appellant Club could have still filed the written statement at that stage, but it chose not to do so, albeit on the ground that the representation of the Respondent/Plaintiff to the new management was under consideration in terms of the direction passed by the Id. Single vide order dated 31st May, 2022 in the concerned suit. However, as is clear from the said order of the Id. Single Judge, there is no direction regarding exclusion of the time taken for consideration of the said representation from the stipulated time for filing of written statement.

21. The purpose of fixing an outer time limit under Rule 4 of Chapter VII of the DHC Original Side Rules for filing the written statement is to ensure that the delay in filing of written statement does not lead to further delay in adjudication of civil suits. **The validity of this Rule having been upheld by the Division Bench in Manhar Sabharwal (supra), the said Rule becomes mandatorily applicable to all suits including non-commercial suits before the Delhi High Court (Original Side). Accordingly, the Court can only extend the period of 30 days for filing of written statement by further 90 days, but not beyond the period of 120 days in total in the opinion of this Court. The language of Rule 4, Chapter VII of the Delhi High Court (Original Side) is clear when it uses the term ‘not thereafter’, as is seen from the text extracted above.**

22. In view of the applicable rule, the delay in filing of the written statement in the present case would not be liable to be condoned, and accordingly, the impugned order does not warrant any interference.”

(Emphasis Supplied)



11. In the facts of this case, the order referring the parties to mediation was passed on 04.03.2024, much after the impugned order dated 11.01.2024, whereby the learned Joint Registrar had already closed the right of the defendants to file the written statement. The period of 120 days had also already expired on 21.11.2023. Thus, reliance placed upon the mediation proceedings to explain the delay is without any merit and cannot be a ground for exclusion of time.

12. So also, the plea as regards lack of guidance from the previous legal counsels engaged by the defendants is absolutely vague. No details have been furnished to substantiate the said allegations, the records shows that the defendants duly entered appearance on 26.08.2023 and sought time to file the written statement. There is nothing on record to show that defendants failed to understand their legal obligations to file the written statement within the time granted. As noted above, the summons itself put the defendants to notice with respect to their obligations to file the written statement within 30 days. The said ground is, therefore, without any merits. The allegation with respect to lack of financial means is also unsubstantiated from the record and fails to inspire any confidence.

13. It is averred in the appeal that the present counsel was engaged on 10.01.2024. The impugned order was passed by the learned Joint Registrar on 11.01.2024. The non-filing of the present appeal within the statutory period of 30 days and the delay of 204 days in filing the present appeal further evidences the frivolous nature of the grounds set out in the appeal.

14. Rule 4 of the DHC Original Side Rules contemplates that the period beyond 30 days has to be condoned if sufficient cause is shown evidencing exceptional and unavoidable reasons, which prevented the defendant from



filing the written statement. In this case, the defendants have elected to file the written statement in August, 2024, 13 months after service and in the considered opinion of this Court, the reasons furnished are not exceptional or unavoidable. This is notwithstanding the fact that this Court even otherwise has no jurisdiction to extend the period beyond 120 days.

15. The appeal is accordingly dismissed on the grounds of limitation as well as on merits.

16. For the reasons stated herein the delay in filing the appeal is not made out and I.A. 41475/2024 is also dismissed.

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17. List before the Joint Registrar (Judicial) on 21.10.2024, the date already fixed.

OCTOBER 7, 2024/hp/AKT

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any