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

+ **CS(OS) 372/2020& I.A. 10975/2020**

SHRI VIJAY SETHI

.....Plaintiff

Through: Mr. S.P. Mehta, Advocate

versus

SHRI ANIL SETHI & ORS.

.....Defendants

Through: Mr. Rishi Bhatnagar, Advocate for D-2 (through VC)

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **25.11.2024**

I.A. 10449/2024 (filed by defendant no. 2/counter claimant under Order VIII Rule 10 CPC)

1. The present application has been filed by the defendant no. 2/counter claimant praying for striking off the right of the plaintiff to file written statement against the counter claim filed by defendant no. 2/counter claimant.
2. Learned counsel appearing for defendant no. 2/counter claimant submits that it is not in dispute that the plaintiff was served with counter claim on 26.09.2022 and the written statement to the counter claim was filed only on 20.07.2024.
3. On a query posed by the Court, learned counsel appearing on behalf of plaintiff fairly concedes the aforesaid position. He submits that though there is delay but an application seeking condonation of delay has been filed. On being further queried by this Court, he admits that the written statement to the counter claim has been filed only after a period of 120 days.
4. In view of the provisions of Rule 4 of Chapter VII of the Delhi High



Court (Original Side) Rules, 2018, the period prescribed for filing of written statement is 30 days, which can be further extended by 90 days but not thereafter.

5. The Coordinate Bench of this Court while interpreting the expression ‘but not thereafter’ has taken the view that under no circumstances, the written statement can be permitted to be filed beyond a period of 120 days.

6. I am supported in my view by the decision of a Coordinate Bench of this Court in ***Sachin Kumar vs. Ravi Ahuja & Ors., 2024 SCC OnLine Del 1312***, wherein it has been held as under:

“20. In the case of Gautam Gambir v. Jai Ambay Traders, 2020 SCC OnLine Del 2621, this Court emphasized on the words “but not thereafter” mentioned in the Rule 4, of Chapter VII of the Delhi High Court Rules, 2018, to observe that these words clearly indicate that a total of 120 days granted for filing of written statement cannot be extended, and if the same is not complied with, then the Registrar may pass orders closing the right to file the same.

21. The Co-ordinate Bench in Col Ashish Khanna SM Retd v. Delhi Gymkhana Club CS(OS) 171/22, decided on 21.08.2023, while considering the similar controversy relied upon the case of Ms. Charu Agrawal v. Alok Kalia, 2023 SCC OnLine Del 1238, Ram Sarup Lugani v. Nirmal Lugani, 2020 SCC OnLine Del 135, and Harjyoti Singh v. Manpreet Kaur, 2021 SCC OnLine Del 2629, to hold the inviolability of the hard stop period of 120 days prescribed in Chapter VII, Rule 4 of the Delhi High Court Rules, 2018, for filing of Written Statement. It was concluded that the debate of the power of the Court to condone the delay in filing the written statement beyond 120 days in a non-commercial suit, has been settled and the Courts have no power to condone this delay beyond 120 days.

22. In view of the above discussed law, it is evident that in view of Chapter VII Rule 4 of the Delhi High Court (Original Side)



Rules, 2018, only a maximum extension of 90 days can be granted beyond the initial 30 days, which however is not a matter of right. Further, the words “but not thereafter” makes it unequivocally clear that in no circumstance can an extension beyond 120 (30 + 90) days be granted.”

(emphasis supplied)

7. In view of the above legal position, the written statement to the counter claim having been filed after 120 days, cannot be taken on record. Accordingly, the present application is allowed and the written statement filed by the plaintiff to the counter claim filed by defendant no. 2 is directed to be taken off the record.

8. The application stands disposed of.

I.A. 34229/2024 (filed by plaintiff under Order VIII Rule 1 read with Section 151 CPC)

9. The present application has been filed by the plaintiff seeking condonation of delay in filing written statement to the counter claim of defendant no. 2/counter claimant.

10. In view of the aforesaid order passed by this Court in I.A. 10449/2024, the present application does not survive. Accordingly, the same is also dismissed.

I.A. 43724/2024 (under Order VIII Rule 10 CPC for striking off the right of the defendant nos. 1, 3, 4 and 5 to the file written statement to the counter claim)

11. Issue fresh notice to the defendant nos. 1, 3, 4 and 5 by all permissible modes returnable on 03.04.2025.

12. In addition, defendant no. 2/counter claimant is at liberty to serve the aforesaid defendants electronically.



I.A. 16138/2023 (under Order I Rule 10 read with Section 151 CPC for impleading Shri Parmeet Singh Anand as defendant in the suit)

13. Learned counsel appearing on behalf of the proposed defendant, namely, Parmeet Singh Anand prays for time to file reply.
14. Let reply be filed within a period of three weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.
15. Renotify on 03.04.2025.

VIKAS MAHAJAN, J

NOVEMBER 25, 2024
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