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

+ **CS(OS) 506/2023**

PRAYAG POLYTECH PRIVATE LIMITEDPlaintiff

Through: Mr. Vipul Ganda, Mr. Indra Chand
Prajapat, Mr. S. K. Giri and Ms. Nirti
Dua, Advocates

versus

SINGLA POLYMER & ORS.Defendants

Through: Mr. Aditya Sharda, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **09.07.2024**

I.A. 25039/2023 (for dismissal of suit)

1. After some arguments, learned counsel for the applicant/defendant states that in view of the judgement of the Coordinate Bench in ***G4S Secure Solutions (India) Pvt. Ltd. v. Matrix Cellular (International) Services, ARB.P. 427/2024***¹ he does not press his plea with respect to bar of limitation. He fairly concedes that by applying the said judgment after giving the benefit of exclusion of time for the period when the limitation was stayed by Supreme Court in ***In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117***, the suit of the plaintiff is within limitation.

2. The present application is accordingly, dismissed as withdrawn.

I.A. 32701/2024 (for condonation of delay)

3. This is an application filed by the applicant/plaintiff under Section 5

¹ 2024:DHC:3750.



of the Limitation Act, 1963 seeking condonation of delay of 88 days in filing the replication beyond the statutory period of 45 days.

4. Issue notice. Learned counsel for the defendant/non-applicant accepts notice. He states that he opposes the present application.

4.1. He states that the delay in filing, as per the defendant is far in excess of 120 days, as the written statement was served upon the plaintiff in December, 2023. He states the time for filing replication is to be reckoned from the date of service.

5. This Court has considered the submissions of the parties. Rule 5 of Delhi High Court on (original suit side) specifically provides that the replication shall be filed within 30 days of the receipt of the written statement. Further time limit can be extended by 15 days if the plaintiff was prevented by sufficient cause, exceptional and unavoidable reasons in filing the replication within 30 days.

6. This Court in **Ram Sarup Lugani v. Nirmal Lugani** (2020 SCC OnLine Del 1353) which has confirmed by the Apex Court in SLP No. 15142/2020 has inter alia held as under;

“21. A conspectus of the decisions referred to above leaves no manner of doubt that where ever the phrase “but not thereafter” has been used in a provision for setting a deadline, the intention of the legislature is to treat the same as a peremptory provision. Thus, if Rule 15 of the DHC Rules mandates filing of a replication within a period of 30 days reckoned from the date of receipt of the written statement, with an additional period of 15 days provided and that too only if the court is satisfied that the plaintiff has been able to demonstrate that it was prevented to do so by sufficient cause or for exceptional and unavoidable reasons, can the time for filing the replication be extended for a further period not exceeding 15 days in any event, with costs imposed on the plaintiff. The critical phrase “but not thereafter” used in Rule 15 must be understood to mean that even the court cannot extend the period for filing the replication beyond the outer limit of 45 days provided in the DHC Rules. Upon expiry of the said



period, the plaintiff's right to file the replication would stand extinguished. Any other meaning sought to be bestowed on the above provision, would make the words "but not thereafter", inconsequential.

22. The next contention of Mr. Mehta that the words "the Registrar shall forthwith place the matter for appropriate orders before the court" used in Rule 5 of the DHC Rules indicates that the court would still have the power to accept a replication filed beyond a period of 45 days, is also untenable. The Supreme Court has emphasized that the answer to the problem as to whether a statutory provision is mandatory or is directory in nature, lies in the intention of the law maker, as expressed in the law itself. The words "replication, if any, shall be filed within 30 days of the receipt of the written statement" and further, the words "further period not exceeding 15 days, but not thereafter" used in Rule 5 will lose its entire meaning if we accept the submission made on behalf of the appellants that even if the timeline for filing the replication cannot be extended by the Registrar, there is no such embargo placed on the court.

23. The court must start with the assumption that every word used in a statute, has been well thought out and inserted with a specific purpose and ordinarily, the court must not deviate from what is expressly stated therein. The period granted for filing the replication under Rule 15 of the DHC Rules is only 30 days and on expiry of 30 days, the court can only condone a delay which does not exceed 15 days over and above 30 days and that too on the condition that the plaintiff is able to offer adequate and sufficient reasons explaining as to why the replication could not be filed within 30 days. As observed earlier, since the terms 'Court' and 'Registrar' have been defined in the DHC Rules, Rule 5 requires that the court alone can extend the time to file the replication beyond the period of 30 days from the date of receipt of the written statement. Even the discretion vested in the court for granting extension of time is hedged with conditions and the outer limit prescribed is 15 days. If the replication is not filed within the extended time granted, the Registrar is required to place the matter back before the court for closing the right of the plaintiff to file the replication.

24. A reading of the relevant provisions of the DHC Rules shows that it is a special provision within the meaning of Section 29(2) of the Limitation Act (for short 'the Act'), that contemplates that where any special or local law prescribes a time limit that is different from the one provided for under the Limitation Act, 1963, then Section 4 to Section 14 of the Limitation Act, 1963 would be expressly excluded. It is well settled that even in a case where the special law does not exclude the provisions of Section 4 to Section 14 of the Limitation Act, 1963 by an express provision or reference, then too, if it is clear from the mandate or the language of the statute, the scheme of the special law will exclude the application of Section 4 to Section 14 of the Limitation Act, 1963. (Ref: Hukumdev Narain Yadav v. Lalit Narain Mishra, reported as (1974) 2 SCC 133).



25. It is equally well settled that when the provision of a law/statute prescribes specific provisions, then those provisions cannot be sidestepped or circumvented by seeking to invoke the inherent powers of the court under the statute. The principles required to be followed for regulating the inherent powers of the court in the context of applying the provisions of Section 151 CPC, have been highlighted in State of Uttar Pradesh v. Roshan Singh, reported as (2008) 2 SCC 488...”

(Emphasis supplied)

7. In view of the aforesaid judgment of the Division Bench the relief of condonation of delay sought in the present application is barred in law and therefore, cannot be granted.

8. Accordingly, the application is dismissed.

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9. Learned counsel for the parties’ state that the admission/denial of documents is complete and the matter be listed before the Joint Registrar (Judicial) for marking of exhibits and filing of joint documents schedule on 01.08.2024.

10. List the matter before the Court for framing of issues on 07.08.2024.

MANMEET PRITAM SINGH ARORA, J

JULY 9, 2024/rhc/sk