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

+ **CS(OS) 554/2022**

LEVERAGE ED-TECH PRIVATE LIMITED Plaintiff

Through: Mr. Vipul Wadhwa, Mr. Carina Arora, Advs.

versus

ABHISHEK NAKHATE & ANR. Defendant

Through: Mr. Arnav Mittal, Mr. Karan Singh, Mr. Banshika Garg, Mr. Shashank Rai, Mr. Sidhant Gupta, Advs. for D-1.
Mr. Abhishek Singh and Mr. Saurabh Kumar, Advs. For D-2.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% **13.04.2023**

I.A. 21988/2022 (Delay in Replication)

1. The present application has been moved for condonation of delay caused in the filing of a replication. The Court is informed that the written statement was served upon the plaintiff on or about 15 October 2022. The replication came to be filed on 29 November 2022. However, and undisputedly, the same was not accompanied with the affidavit of admission and denial as contemplated under Chapter VII of the Delhi High Court (Original Side) Rules, 2018. The affidavit of admission and denial ultimately came to be filed on 10 December 2022. It is in the aforesaid backdrop that learned counsel appearing for the defendant No.1 would contend that the replication is liable to be struck off the record since in terms of Rule 6 and 7, the affidavit of admission and denial must necessarily accompany the replication.

2. The Court notes that the aforesaid question stand duly answered in favour of the plaintiff in terms of the judgements rendered in



COSCO (India) Limited vs. Paramsukh Nirman Pvt. Ltd. [2019 SCC OnLine Del 9633] and **COSCO International Pvt. Ltd. vs. Jagat Singh Dugar** [2022 SCC OnLine Del 1113].

3. While dealing with an identical question, the Court in *Paramsukh Nirman Pvt. Ltd.* has held and observed as under:-

“9. A perusal of the judgments cited by both the counsels for the parties, shows that:

- a) The filing of the written statement has to be within 120 days. The period of 120 days is mandatory;
- b) The written statement has to be accompanied with the affidavit of admission/denial.

10. However, under Chapter VII, Rule 3 of the Delhi High Court (Original Side) Rules, once a written statement is filed, the same would not be brought on record without the affidavit of admission/denial. It would be one of the defects in the written statement if it is not accompanied with the affidavit of admission/denial. For re-filing and removing defects, there is a total 30 days' period which is available to parties. Chapter I Rule 14 cannot be used to dispense with the mandatory requirements under the Rules, but only in respect of those rules where it is only a question of practice and procedure. The time of seven days from re-filing within the total period of 30 days would have to be considered as a matter of practice and procedure in the present case inasmuch as there is a fundamental difference between the 'filing of the written statement' along with the affidavit of admission/denial and 'bringing the same on record'. If the affidavit of admission/denial is not accompanying the written statement, however, upon the Registry pointing out the said defect, the same can be cured within 30 days. If the said defect is cured, it cannot be held that the written statement and the affidavit of admission/denial cannot be brought on record.

11. While the timelines for filing the written statement within 120 days, are absolutely mandatory, removal of defects has to be seen in the overall period of 30 days which is permitted under Rule 3 of Chapter IV. In the present case, the first filing was on 15th January, 2019, the second filing was on 25th January, 2019 and the final filing was on 15th February, 2019. The time of 120 days expired only on 22nd January 2019, thus the written statement was filed within the 120 days period. The defects, which were pointed out by the Registry i.e. not filing of admission/denial affidavit was cured within the broad frame work of Chapter IV, Rule 3 i.e. within 30 days of the initial filing of the written statement.

12. Mr. Asheesh Jain, Ld. counsel has rightly pointed out that



as per *Unilin Beheer B.V. (supra)*, the time period for filing of admission/denial affidavit which is 120 days is not extendable as per para 32 of the said judgment. The purpose of admission/denial of documents is for a party to take a stand as to whether the documents of the Plaintiff are being admitted or denied. The written statement sets out the fundamental defence of the Defendant, and the affidavit of admission/denial is merely a notation of the stand of the Defendant, which is expected to be contained in the written statement. In the present case, the written statement having been filed within the 120 days' period, the stand of the Defendant in respect of the documents has already come on record. What is only not filed is a chart in the form provided specifically mentioning as to whether there is admission or denial of the documents. In the facts of the present case, the Court does not deem it appropriate to interfere in the order of the Joint Registrar. It is also relevant to point out that the replication has also been filed by the Plaintiff along with the affidavit of admission/denial. Both have been filed on 27th July, 2019.

13. Moreover, in the present case, the format for affidavit of admission/denial was only notified by the Delhi High Court w.e.f. 1st November, 2018. The summons in this suit was served on 24th September, 2018 which is prior to the date when the notification of the format for admission/denial was issued. Even under these circumstances, this Court is of the opinion that a minimum period of 120 days from the date when the Rule was finally notified ought to in any case be given to the Defendant for filing of the affidavit of admission/denial.

14. Under these overall circumstances, this Court holds that the written statement along with the affidavit of admission/denial would be liable to be taken on record as filing, re-filing, etc. are procedural matters which the High Court Registry follows. Broadly if the timelines are adhered to, the Court would not strike out the defence of a party, especially in a suit where recovery of such a huge amount is being sought. Recently in *Robin Thapa v. Rohit Dora* [Civil Appeal No. 4507/2019 decided on 8th July, 2019] it has been held by the Supreme Court that the endeavour of the Court has to be decide disputes on merits and not on the defaults of the parties. The relevant paragraph reads as under:

“8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or of the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

4. The Court deems it apposite to extract the following passages from the decision in *Jagat Singh Dugar* :-



15. Upon a conspectus of the timelines as set-out above and in light of the provisions of the CPC as amended by the Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts (Amendment) Act, 2018 read in conjunction with the Delhi High Court (Original Side) Rules 2018, as also the judicial precedents referred to by the parties, this court is of the view that written statement having been *filed* within the statutory period; and the defect of non-filing of the affidavit of admission/denial also having been cured well within the permissible time period, nothing further stands in the way of the written statement being taken on record.

16. For clarity, it is reiterated that what Order V Rule 1(1) and Order VIII Rule 1 CPC provide is the outer time-limit for *filing* of the written statement of defence. The filling by the defendant of an affidavit of admission/denial of the plaintiff's documents, is a *separate* requirement under Chapter VII Rule 3 and 4 of the Delhi High Court (Original Side) Rules, 2018; and the consequence for not filing such affidavit is that the written statement shall not be *taken on record* and that the plaintiff's documents shall be deemed to be admitted by the defendant. However, the filing of a written statement *within* the prescribed time but *without* an accompanying affidavit of admission/denial of documents, does not amount to *non-est* filing, since *it cannot be said that nothing was filed at all*. It would, however, amount to a defect, that is required to be cured after it is brought to the attention of the party by the Registry. Chapter VII Rule 3 only bars *taking on record* a written statement that is filed without an accompanying affidavit of admission/denial of documents. *Filing* of the written statement and it being *taken on record* are two separate and distinct matters."

5. Accordingly, and for all the aforesaid reasons, the present application shall stand allowed. The delay caused in filling of the replication shall stand duly condoned.

CS(OS) 554/2022

6. Let the matter be now placed before the concerned Joint Registrar for taking further steps on 14.07.2023.

YASHWANT VARMA, J.

APRIL 13, 2023

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