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* IN THE HIGH COURT OF DELHI AT NEW DELHI

CNR No. DLHC010488182022

+ CS(COMM) 908/2022

ARRMANN SHANKAR SHARMA @ SAMEER
SHANKAR BHATTACHARYA

.....Plaintiff

Through: Mr. Tushar Nair and Ms.
Deshna Jain, Advs.

versus

BEAR GRYLLS & ORS.

.....Defendants

Through: Mr. Kshitij Parashar, Mr.
Nirupam Lodha and Mr.
Abhineet Kalia, Advs for
D-2, D-4, D-5-D-7.
Mr. Veerashwar Singh
Jaduan and Ms. Payal Kalra,
Advs for D-3 (VC).

CORAM:

JOINT REGISTRAR (JUDICIAL) MS. SWATI KATIYAR

ORDER

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17.08.2026

I.A. No. 8493/2024 filed by defendant no. 2 to take on record the written statement.

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I.A. No. 10649/2024 filed by defendant no. 4 seeking the Hon'ble Court's leave to file the accompanying written statement.

1. The IAs are listed for orders.
2. The present applications have been preferred by Defendant Nos. 2 and 4 under Section 151 of the Code of Civil Procedure, 1908 ("CPC"), seeking recall / modification of the order dated 20.11.2023, whereby their right to file written statements was



closed, and consequently seeking that the written statements filed along with the applications be taken on record. It is seen that the present applications have been moved under Section 151 CPC which is a general provision, however, vide the present application, defendants are seeking review of order dated 20.11.2023.

3. Ld. Counsel for plaintiff submits that the defendants ought to have filed a chamber appeal against order dated 20.11.2023 rather than filing applications under section 151 CPC. Ld. Counsel for defendant no. 2 and 4 submit that the Court has wide powers and in the interest of justice, the present applications be treated as applications for review of order dated 20.11.2023 under section 114 read with Order 47 Rule 1 CPC.

4. In view of the submissions made by Ld. Counsel for defendant no.2 and 4 and in the interest of justice, the present applications are treated as applications under section 114 read with Order 47 Rule 1 CPC.

5. Since both the applications raise a common issue concerning the validity and effect of the alleged service of summons upon Defendant Nos. 2 and 4, who are stated to be residing/located outside India i.e. United States of America, the applications are being decided by this common order.

6. Defendant No. 2 contends that he is a national and resident of the United States of America and that he was never duly served with summons in the present suit. It is contended that the e-mail address **tom.shelly@nbcuni.com**, to which summons were stated to have been transmitted on 11.04.2023, was an old official e-mail address which had ceased to be accessible to him after his association with Defendant No. 4 ended on 31.12.2014. It is further contended that plaintiff alleged to have effected service upon



defendant no.2 through post addresses: (i) 30, Rockefeller Plaza, New Your, USA 10112 and (ii) CNB Square, Sangam Complex, 127, Andheri Kurla Road, Andheri (E), Mumbai 400059. It is submitted that defendant no.2 is a resident of USA and neither of the addresses are related to defendant no.2. It is submitted that even otherwise, there is no proof of postal service of the incorrect address of defendant no.2 mentioned as that of USA and the postal service in India was returned with the report, “not owned by the recipients”.

7. Defendant No. 2 further contends that he acquired knowledge of the proceedings subsequently and thereafter contacted the other defendants and obtained the relevant papers. He accordingly asserts that the period prescribed for filing the written statement could not have commenced from 11.04.2023.

8. Defendant No. 4, NBC Universal Media LLC, contends that it is an entity situated in the United States of America and has no physical presence in India. According to Defendant No. 4, the addresses **sburke@nbcuni.com** and **info@nbcuni.com**, on which electronic service was purportedly effected, did not constitute effective service upon it. The former email was stated to belong to its erstwhile CEO, whereas the latter was stated not to be an active account. It is further submitted that postal service upon the address stated to be of defendant no.4 in Mumbai was returned with the report ‘left’ since the address in Mumbai ceased to be address of defendant no.4 in July 2020, approximately two years before the present suit was filed and the same could have been verified by the plaintiff, given that defendant no.4’s counsel had communicated the correct corporate information by reply dated 19.08.2022 to the plaintiff. It is further submitted that the speed post allegedly sent at the address in United States of America was not delivered as the



same was addressed to an incorrect entity i.e. NBC Universal Inc. instead of NBC Universal Media, LLC.

9. Defendant No. 4 claims that it became aware of the present proceedings only subsequently when its external counsel informed it about the hearing dated 07.12.2023, whereafter it obtained papers concerning the proceedings.

10. The plaintiff chose not to file any reply to the present applications but advanced oral arguments and filed written submissions. Ld. Counsel for plaintiff relied upon the orders of the Hon'ble Court dated 23.12.2022 and 22.02.2023, whereby summons were directed to be issued to the defendants through all modes, and asserts that Defendant Nos. 2 and 4 were served through e-mail on 11.04.2023. The Plaintiff filed an affidavit of service on 20.04.2023.

11. On 20.11.2023, my Ld. Predecessor proceeding on the basis of the said affidavit of service, recorded that Defendant Nos. 2 and 4 had been served through e-mail on 11.04.2023 and that more than 120 days had elapsed without their written statements being filed and consequently closed the rights of defendant no. 2 and 4 to file written statements.

12. Ld. Counsel for plaintiff argues that the order dated 20.11.2023 was appealable by way of a Chamber Appeal under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 and, without challenging the same, Defendant Nos. 2 and 4 cannot seek its recall by way of present applications. Reliance is placed upon the Division Bench decision in *Rohit Sharma v. A.M. Market Place Pvt. Ltd.*, 2021 SCC OnLine Del 3092.

13. Ld. Counsel for plaintiff also submits that the e-mail addresses used for service were publicly available addresses and



that the e-mails sent on 11.04.2023 did not bounce back. It is further pointed out that Defendant No. 4 had responded, through counsel, to the Plaintiff's pre-suit legal notice, therefore they were well-aware of the dispute. Ld. Counsel for plaintiff heavily relied upon the decision in *Charuvila Philipose Sundaran Pillai and anr. v. P. N. Sivadasan and ors.* (2024 SCC OnLine Ker 6724) and *SCG Contracts (India) (P) Ltd. V. K.S. Chamankar Infrastructure (P) Ltd.* (2019) 12 SCC 210 amongst other decisions mentioned in the written submissions and prayed for dismissal of the applications.

14. I have considered the submissions and perused the record carefully.

15. It is a settled law that in a commercial suit, the written statement is to be filed within the maximum permissible period of 120 days, which cannot be extended any further under any circumstance whatsoever. The decision in *Rohit Sharma v. A.M. Market Place Pvt. Ltd.* reiterated the mandatory nature of the 120-day period and it was also observed by Hon'ble Court that when the foundational order had remained unchallenged, a defendant could not subsequently circumvent the consequence flowing therefrom. In the case of *Rohit Sharma*, the summons sent to the appellant through speed post were received back with the remarks "refused by mother" Hence, the appellant was deemed to be served by the court. The principle of law laid down in *Rohit Sharma's* case presupposes *due service of summons* upon the defendant. However, in the present case, defendant no.2 and 4 are not merely seeking condonation of delay after admitting service on 11.04.2023. Their case goes to the root of the computation of the period itself in as much as according to the defendants, they were never duly served with the summons through any mode whatsoever. Defendants have disputed the period calculated on the



basis of the date provided by plaintiff in its affidavit qua service through email which is alleged to be not in accordance with practice directions issued by Hon'ble Court vide order no. 68/Rules/DHC/2019 dated 03.12.2019.

16. At this juncture, it would be pertinent to refer to the practice directions issued by Hon'ble Court vide order no. 68/Rules/DHC/2019 dated 03.12.2019, which states as under :-

*“While filing fresh suits/arbitration or other filings in the Ordinary Original Civil Jurisdiction of this Court, advance copy of paper book/filing wherever required to be served on the opposite party/counsel, may also be effected by e-mail and the same be accepted by the Registry as adequate proof of service, provided such suits/arbitration or other filings is accompanied with an affidavit of the filing counsel/party to the effect **that the e-mail address at which e-mail has been sent is that of the concerned party/counsel and that the e-mail has been delivered and has not bounced back.** The affidavit shall also set out the date and time of the e-mail sent and the e-mail address at which it has been sent. The e-mail shall also specify the actual date when the fresh filing is to be listed. In case there are defects and re-filings, the final filing to be accompanied with affidavit of service of e-mail of the fresh date of listing.” (emphasis added)*

17. The plaintiff has relied upon its affidavit of service filed on 20.04.2023 for treating Defendant Nos. 2 and 4 as having been served through e-mail on 11.04.2023. The subsequent written submissions of the Plaintiff state that none of the e-mails bounced back. However, on examination of the affidavit of service filed by the plaintiff, it is seen that there is no declaration therein that the e-mails transmitted to Defendant Nos. 2 and 4 had not bounced back. No delivery receipt or other contemporaneous material establishing successful electronic delivery upon defendant no. 2 and 4 has been shown to the Court either. This omission cannot be regarded as insignificant in the facts and circumstances of the present case. The Practice Directions issued vide order No.



68/Rules/DHC/2019 dated 03.12.2019, while recognising e-mail as a permissible mode of service in the circumstances contemplated therein, specifically require the affidavit of the filing counsel/party to state that the e-mail address is that of the concerned party/counsel and that **the e-mail has not bounced back**. The subsequent assertion contained in the Plaintiff's written submissions that the e-mails did not bounce back cannot retrospectively substitute the requisite contemporaneous declaration in the affidavit of service on the basis of which order dated 20.11.2023 was passed.

18. Further, Ld. Counsel for plaintiff relied upon the legal notice dated 08.08.2022 sent to Defendant No. 4 and that Defendant No. 4 responded to the same through the counsel. However, merely because defendant no.4 sent a reply to the legal notice issued prior to the institution of the suit, the statutory requirement of service of summons cannot be presumed merely upon the basis of earlier correspondence between the parties.

19. Ld counsel for defendant no.2 strongly argued that neither of the addresses mentioned by the plaintiff belongs to defendant no.2 and defendant no.2 was never served even by way of speed post. It is further submitted that even otherwise, the summons issued to defendant no.2 on the alleged address of Mumbai through speed post were returned with the remarks "not owned by the recipients" and no steps were taken whatsoever by the plaintiff to effect service on the alleged address of defendant no.2 at USA.

20. Ld counsel for defendant no.4 argues that the address of Mumbai was vacated by defendant no.4 in July 2020 i.e. two years before filing of the present suit and qua the address of USA, plaintiff had addressed the registered post to incorrect entity i.e.



NBC Universal Inc. instead of NBC Universal Media, LLC despite being aware of the correct name of defendant no.4. Ld counsel for defendant no.4 also drew attention of the court to the reply dated 19.08.2022 addressed to Ld counsel for plaintiff, where the counsel for defendant no.4 has categorically mentioned the correct entity of defendant no.4 as NBC Universal Media, LLC. Ld counsel for plaintiff has not submitted any explanation as to why the process was not addressed by plaintiff to the correct entity of defendant no.4 despite being aware of the same by virtue of reply of defendant no.4 to legal notice dated 19.08.2022.

21. The affidavit of service filed by plaintiff does not contain any declaration that the e-mails sent to the defendants never bounced back or that the summons sent through speed post were delivered to the defendants. The internet generated tracking reports of the speed post do not contain any noting of process delivered to the defendant no.2 and 4. There is no delivery report by any other mode such as courier to establish due service of summons upon the defendants. It is not a case where a defendant, despite admitted or conclusively established service, seeks to overcome the statutory prohibition after 120 days but the issue raised by defendant is that the statutory period never commenced. On the material before this Court, due service on 11.04.2023 itself has not been satisfactorily established. Thus, the statutory clock under Order VIII Rule 1 CPC cannot therefore be deemed to have commenced on that date.

22. The defendants have also relied upon the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965 and the orders of Hon'ble Delhi High Court in *Microsoft Corporation & Anr. v. Tech Heracles OPC Private Limited & Ors.*, CS(COMM) 276/2021 dated 14.03.2022. In *Microsoft Corporation*, Hon'ble Court considered



the consolidated procedure for service of judicial process upon persons residing abroad and recorded the procedure involving the Ministry of Law and Justice and the Hague Convention. In respect of service in the United States, the order specifically noticed the designated procedure for transmission of summons and directed service upon a defendant situated in Canada in accordance with the Hague Convention mechanism.

23. So far as the reliance of Ld. Counsel for plaintiff on the decision of Hon'ble High Court of Kerala in *Charuvila Philipose (2024 SCC OnLine Ker 6724)* is concerned, it is seen that the said decision permits certain alternative modes of service abroad but does not dispense with the necessity of establishing that service was actually effected. Further, the mandatory prohibition in *SCG Contracts* arises only after expiry of 120 days **from due service of summons**.

24. Consequently, taking the written statements on record in the present circumstances does not amount to extending the statutory period beyond 120 days. It follows from the finding that the starting point adopted in the order dated 20.11.2023 was not supported by sufficient proof of completed service.

25. Consequently, the order dated 20.11.2023, insofar as it closes the right of Defendant Nos. 2 and 4 to file their written statements on the premise that 120 days had expired from service dated 11.04.2023 suffers from an error apparent on the face of record as the affidavit of service filed by plaintiff fails to mention the material particular as per Delhi High Court Practice Directions and the Rules to show due service upon the defendants. Hence, in view of the observations made above, the order dated 20.11.2023 is hereby recalled and set aside.



26. I.A. 8493/2024 and I.A. 10649/2024 are accordingly allowed.

27. The written statements filed by Defendant Nos. 2 and 4 along with affidavit of admission/ denial of documents and statement of truth filed along-with the respective applications are directed to be taken on record, subject to removal of objections, if any.

28. The captioned I.A. 8493/2024 and I.A. 10649/2024 stand disposed of in the aforesaid terms.

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29. Matter is listed for completion of pleadings.

30. Pleadings qua defendant no.1, 3, 5 to 7 are complete.

31. Written statement of defendant no.2 and 4 have been taken on record today. Let the replications be filed as per rules.

32. Put up for completion of pleadings on 18.11.2026.

**SWATI KATIYAR,
JOINT REGISTRAR (JUDICIAL)**

AUGUST 17, 2026/BK