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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 7th November, 2024

+ **FAO(OS) 69/2023 & CM APPL. 28603/2023**

AMIT TARA & ORS.

.....Appellants

Through: Mr. Rajat Aneja & Mr. Aditya Sharma
Advs. (M- 9999043058)

versus

DEEPAK TARA & ORS.

.....Respondents

Through: Respondent No.1 through VC.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed challenging the impugned order dated 13th April, 2023 passed by the learned Single Judge in *CS(OS) 73/2019* titled *Sh. Deepak Tara v. Sh. Baij Nath Tara & Ors.*, by which the Chamber Appeal (*O.A. 150/2019*) of the Appellant was dismissed. The said Chamber Appeal was filed challenging the Joint Registrar's order dated 17th July, 2019 striking off the written statement of the Appellants in the suit.
3. The Plaintiff in *CS(OS) 73/2019 i.e.*, Shri Deepak Tara, a resident of Sweden filed a suit for declaration, partition and injunction in respect of a 200 sq. yard's plot bearing no. A-23, Nizamuddin East, New Delhi. The owner of the said plot is stated to be late Shri Dwarka Nath Tara, the father of the Plaintiff in the suit. The Defendants in the said suit are the brothers of the Plaintiff - Deepak Tara *i.e.*, Shri Baij Nath Tara, Shri Ashok Kumar Tara, Shri Pradeep Tara. The sister - Smt. Shama Bengtson is also a party. The mother of the Plaintiff- Smt. Soma Rani Tara (wife of Late Dwarka Nath Tara), who



is now deceased was impleaded as Defendant no.6. The legal heirs of Shri Surinder Nath Tara *i.e.*, Sh. Amit Tara, Mrs Alka, Mrs. Rakhi Choudhary, and Mrs. Ruchi are also impleaded in the main suit.

4. The prayer in the suit was for declaration, preliminary decree and final decree of partition and as also for injunction. The suit was listed on 11th February, 2019 and summons were issued, returnable on 3rd May, 2019. Defendants No 2(A)-Amit Tara and Defendant No. 4- Pradeep Tara appeared for the first time on 3rd May, 2019 and the matter was listed for completion of pleadings on 17th July, 2019. It is not in dispute that the Appellants were issued summons on 11th February, 2019.

5. On 17th July, 2019, the learned Joint Registrar passed the following order:-

“None appeared on behalf of the defendants despite repeated calls.

*Defendant No. 1, 2(a) to (d) 4 & 6 already stated to be served. Aforesaid defendants have not filed the written statement in the present case. Statutory period for filing the written statement has already been expired. **Accordingly, right of the defendant no. 1, 2(a) to (d), 4 & 6 to file written Statement stands closed.***

Issue fresh summons of the suit to the remaining unserved defendants by all modes returnable for the next date of hearing. Steps for service be taken within a week.

At request, re-notify- the matter, for completion of pleadings on 24.10.2019”.

As per the above order, the time period for filing of the written statement in terms of the Delhi High Court (Original Side) Rules, 2018 (hereinafter, ‘*the Rules*’) had expired and thus, the Joint Registrar closed the right of the Appellants to file the written statement.

6. The order-sheets in the suit also reflect that on various dates *i.e.*, 3rd



May, 2019; 24th September, 2019; 24th October, 2019; 9th December, 2019 - the appearance of the Appellants was completely erratic.

7. The aforementioned order dated 17th July, 2019 was challenged by way of a Chamber Appeal (*O.A. 150/2019*) by the Appellants *i.e.*, Defendant Nos 2(a)-2(d)- Mr. Amit Tara, Ms. Alka, Ms Rakhi Tara Sachdeva, Ms. Ruchi Tara Sagar and Defendant No. 4 -Pradeep Tara.

8. In the Chamber Appeal, there were broadly two grounds that were taken by the Appellants. Firstly, that the dispute is between family members and that the parties were engaged in settlement talks. The Appellants in the Chamber Appeal claimed that they were unaware of the order dated 17th July, 2019 and only discovered it through Court inquiries after failed efforts to find it online. Secondly, the Appellants averred that interpretation of Rules 3 and 4 of Chapter VII of the Rules would show that the time can be extended for filing of the written statement.

9. At this stage, Respondent No.1-Deepak Tara, appearing virtually, refutes the allegation that there were any settlement talks between the parties. He states that there has been no talk in the last 3 years between the parties and thus the grounds taken in the Chamber Appeal were false.

10. The said Chamber Appeal was rejected by the learned Single Judge vide order dated 13th April, 2023, observing that the written statement had come to be filed after the maximum period had expired in terms of Rule 4, Chapter VII of the Delhi High Court (Original Side) Rules, 2018. The said Rule is extracted hereinunder:

*“4. Extension of time for filing written statement.—
If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the*



time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/ deposited. In case the defendant fails to file the affidavit of admission/ denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.”

11. In the meantime, the constitutional validity of Rule 4 of Chapter VII of the Rules was also challenged in the batch of matters titled *Manhar Sahbarwal v. High Court of Delhi & Ors. (2024:DHC:6406)* in which the learned Division Bench of this Court upheld the said Rules. The operative portion of the said judgment is 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)*⁵, 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.

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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.”

12. Thereafter, this appeal challenging order dated 13th April, 2024 dismissing the aforesaid Chamber Appeal was listed for hearing. The present appeal has been filed by the Appellants in the Chamber Appeal *i.e.*, Defendant



Nos. 2(a)-2(d) and Defendant No. 4 in the suit.

13. Ld. Counsel for the Appellants primarily places reliance on the decision of the Id. Single Judge in *Amarendra Dhari Singh v. R.C. Nursery Pvt. Ltd., [CS (OS) 128/2022, decided on 09.01.2023]* to argue that the Delhi High Court Original Side Rules, 2018 are in contradistinction with the provisions of the Commercial Courts Act, 2015. As per the Appellants, the time period prescribed in the said Rules are not mandatory inasmuch the latter part of the aforementioned Rule 4, uses the word 'may' and vests discretion with the Registrar to close or not to close the right to file the written statement.

14. The Court has considered the matter. The language in Rule 4 of the Rules is very clear when it uses the terminology 'but not thereafter'. The said Rule has been recently interpreted by this Court in *Delhi Gymkhana Club Limited. Vs. Col. Ashish Khanna SM Retd. & Ors. [2024:DHC7524-DB]* where the Court has clearly observed as under:-

“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.”

15. In view of the fact that the constitutional validity of the said Rules has now been upheld in *Manhar Sahbarwal (supra)* and in view of the decision in *Delhi Gymkhana Club Limited (supra)*, it is settled law that the written statement cannot be filed beyond the period of 120 days prescribed in the DHC (Original Side) rules 2018. Clearly, in the suit, the written statement has been filed beyond the prescribed period under the Rules.

16. Further, the discretion exercised by the Court to condone the delay in filing of the written statement is limited to a period of 90 days after the initial 30 days' time period prescribed under the Rules. The said discretion can be exercised if the Court is satisfied that the Defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within the period of 30 days. Moreover, the time period mandated under the Rule 4 of the Rules cannot be extended beyond 120 days on any ground, including on the ground that mediation/ settlement talks were on going or pending between the parties during the relevant time for filing of written statement. Ld. Single Judge of this Court in *Harjyot Singh v. Manpreet Kaur [2021 SCC OnLine Del 2629]*, has considered the mandatory nature of Rule 4 *vis-à-vis* delay in filing to written statement on the ground of pendency of mediation or settlement talk between parties. The observations of ld. Single Judge are reproduced hereinunder:

“38. Mr. Baruah's contention that the defendant could not have been expected to file the written statement while the parties were endeavouring to resolve the disputes amicably, is merited. As noticed above, the same is a sufficient ground for condoning the delay in filing the written statement. In Red Bull AG v. Pepsico India Holdings Pvt. Ltd. (Supra); Dr. Sukhdev Singh Gambhir v. Shri Amrit Pal Singh : (2003) 105



DLT 184; Telefonaktiebolaget L.M. Ericsson v. Lava International Limited : (2016) 226 DLT 342 this court had condoned the delays on account of the time spent by the parties in endeavouring to resolve the disputes in Mediation. **However, the time spent by the parties in Mediation cannot be excluded from the time stipulated for filing of the written statement or replication.** As noticed above, the defendant is required to file the written statement within a period of thirty days from the date of receipt of summons. **This Court can condone a delay of ninety days beyond that period provided that the defendant satisfies this Court that it was prevented by 'sufficient cause for exceptional and unavoidable reason' in filing the written statement within the period of 30 days.** The fact that the parties were attempting to resolve the disputes would be a sufficient cause to condone the delay. **However, the Court cannot condone the delay beyond the period of ninety days as stipulated under Rule 4 of DHC(OS) Rules. There is no provision to the aforesaid effect.** Once it has been held that the provisions of Rule 4 of DHC(OS) Rules are mandatory and, **the Court does not have jurisdiction to condone the delay beyond a period of ninety days as has been held by the Division Bench of this Court in Ram Sarup Lugani (supra), the question of condoning the delay beyond that period for any reason whatsoever is not permissible.**

39. This Court is unable to accept the contention that the delay in filing the written statement on the part of the defendant can be condoned.

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46. Rule 4 of the DHC Rules is a rule of procedure and insofar as expedient, a liberal view in condoning the delay ought to be taken by the Court, however, that does not mean that the said Rule can be completely ignored or should be interpreted to render it meaningless. In the present case, even if it is accepted that this Court has the jurisdiction to condone the delay in filing the written statement beyond a period of 90 days (which this court does not), there are grounds for doing so in this case.”

17. In view of the above, it is clear that the period for filing the written



statement cannot be extended beyond the mandatory period of 120 days even if parties are engaged in settlement/ mediation. Accordingly, even in the present case, merely because alleged settlement talks were going on between the parties, the same is not a sufficient ground to extend the period for filing of the written statement beyond 120 days.

18. It is also the settled position in law that filing of an application under Order VII Rule 11 CPC, would not extend the period for filing of written statement. In fact, the settled legal position is that the written statement should be filed irrespective of an application under Order VII Rule 11 CPC being pending. The said position is clear as laid down in ***R.K. Roja v. U. S. Rayudu & Anr. [(2016) 14 SCC 275]***, where the Supreme Court held as under:

“6. Once an application is filed under Order VII Rule 11 of the CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (Election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter (See Saleem Bhai and others v. State of Maharashtra and others²). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote relevant portion from paragraph-20 of Sopan Sukhdeo Sable case (supra):

“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in



rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. ...”

7. In *Saleem Bhai case (supra)*, this Court has also held that ... “A direction to file the written statement without deciding the application under Order VII Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction of the trial court.” **However, we may hasten to add that the liberty to file an application for rejection under Order VII Rule 11 of the CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement”.**

19. In the present case, the said position also would not assist the Appellant as the application under Order VII Rule 11 CPC was filed after the time period for written statement was exhausted. Accordingly, the plea based on the pendency of the application under Order VII Rule 11 CPC or the alleged on-going settlement talks, by the Appellant, for seeking condonation of delay in filing of the written statement beyond the mandatory period prescribed under the Rules, is not tenable.

20. In view of the above, the impugned order dated 13th April 2024 does not warrant any interference.

21. The appeal is, accordingly, dismissed. Pending applications, if any, are also disposed of.

22. The suit shall now proceed before the Id. Single Judge.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

NOVEMBER 7, 2024/Nk/bh
(Corrected and released on 14th November 2024)