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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CS(COMM) 143/2023

DLT GLOBAL INC ..... Plaintiff  
Through: Dr. Abhimanyu Chopra, Mr.  
Varun Lamba, Mr. Aman Chaudhary and  
Mr. Kushagra Jain, Advs.

versus

DLT LABS TECHNOLOGIES  
PRIVATE LIMITED & ORS. .... Defendants  
Through: Mr. Rajshekhar Rao, Sr. Adv.  
with Mr. Rajat Mahur, Mr. Bhavya Goyal,  
Mr. Pranjal Tripathi and Mr. Harshil Wason,  
Advs. for D-2 to D-7

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**J U D G M E N T ( O R A L )**

% **29.08.2023**

**I.A. 16398/2023 (Order VIII Rule 10 of the CPC for pronouncement of judgment)**

1. This is an application filed by the plaintiff under Order VIII Rule 10<sup>1</sup> of the Code of Civil Procedure, 1908 (CPC) [as amended by the Commercial Courts Act, 2015] seeking a judgment in favour of the plaintiff and against the defendants in terms of the said Rule.

2. Order VIII Rule 10 of the CPC, plainly read, applies only where a party, from whom a written statement is required either under Order

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<sup>1</sup> 10. **Procedure when party fails to present written statement called for by Court.** – Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree



VIII Rule 1<sup>2</sup> or Order VIII Rule 9<sup>3</sup>, fails to present the written statement within the time permitted or the time fixed by the Court. In either of these exigencies, the plaintiff is permitted, by Order VIII Rule 10, to require the Court to pronounce judgment against the defendants or make such other order in relation to the suit as it thinks fit.

3. The failure to present the written statement within the time required by Order VIII Rule 1 or Order VIII Rule 9 of the CPC or within the time fixed by the Court is, therefore, the indispensable *sine qua non* for Order VIII Rule 10 to apply.

4. Order VIII Rule 9 of the CPC has no application to the facts of the present case.

5. The *terminus a quo*, for filing a written statement under Order VIII Rule 1 of the CPC is the date of service of summons on the defendants.

6. Service of summons, in suits filed on the Original Side of this Court is governed by Rule 1 in Chapter VI of the Delhi High Court

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shall be drawn up.

<sup>2</sup> 1. **Written statement.** – The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.

<sup>3</sup> 9. **Subsequent pleadings.** – No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties cut and fix a time of not more than thirty days for presenting the same.



(Original Side) Rules 2018 (“the Original Side Rules”, hereinafter), clauses (a), (b) and (e) of which read thus:

“(a) *Except where otherwise provided by these Rules, or ordered by the Court, all summons, notices other documents required to be given to or served on a party or person, who resides within the jurisdiction of the Court, shall be served on such party or person either personally or on his Advocate.*

(b) Service of any notice, order or other document upon a person, who resides outside the jurisdiction of the Court/ Registrar, but within the territory of India, may ordinarily be effected, *by posting a copy of the document required to be served in a prepaid envelope registered for acknowledgement addressed to the party or his agent empowered to accept service, at the place where the party or his agent resides or carries on business or personally works for gain or by means of recognized courier service (subject to furnishing the track report).*

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(e) Notwithstanding anything contained in Order V rule 10 of the Code, *the Court may, in the very first instance, issue summons by registered post (acknowledgement due) or by authorized courier or by fax or electronic mail service, SMS or any other web based or virtual communication mode or permit the plaintiff to serve the summons dasti; in addition to the ordinary way. Court may direct service of summons by all modes of service simultaneously or in any combination of any of the modes of service. For this purpose, the publicly available e-mail address and fax number, either on the website of the party or in public domain/records shall be deemed to be the correct e-mail address and fax number respectively.*”

7. Dr. Abhimanyu Chopra, learned Counsel for the plaintiff, on being queried as to when summons were served on the defendants in the present case in accordance with Rule 1 in Chapter VI of the Original Side Rules, acknowledges, at the outset, that *summons were never drawn up by the Registry in the present case.* He initially sought to submit that the process fee was filed by his clients but that there was a delay on the part of the Registry in drawing of summons, for which the plaintiff could not be prejudiced. Subsequently, on Mr.



Rajshekhar Rao, learned Senior Counsel for Defendants 2 to 7 pointing out, from the case history of the present suit, as available on the website of this Court, that process fee was not filed in time, Dr. Chopra submits on instructions that process fee was filed on 14 April 2023 and, thereafter, on 22 April 2023. In either case, it was a whole month after summons were directed to be issued by this Court.

**8.** Mr. Rao submits, on instructions, that the Registry informs that the process fee which was filed on 14 April 2023/22 April 2023 was not for service of summons in the suit and that, in all possibility, process fee for service of summons in the suit has not been deposited by the plaintiff till date. Let the Registry place a report on record within a period of one week as to whether process fee was actually filed by the plaintiff on the summons issued in the suit on 14 March 2023, and if so, the date when the process fee was thus filed.

**9.** Be that as it may, even if process fee were to be treated as having been deposited on 14 April 2023 as already noted, it was a whole month after summons were issued by this Court on 14 March 2023. By no stretch of imagination, therefore, could it be said that the summons were served on the defendants prior to 14 April 2023. In fact, *it is undisputed, even by Dr. Chopra, that no summons were formerly served on the defendants in accordance with the procedure envisaged by the Original Side Rules of this Court or by the CPC, till date.*

**10.** Dr. Chopra, however, seeks to submit that the learned Local Commissioner, who had been appointed to visit the premises of the



defendants and to execute the commission as directed by this Court, had served copies of the papers in this matter on the defendants by hand. In certain cases where the defendants refused to accept copies from the learned Local Commissioner, he submits that he had forwarded the documents by e-mail. His first contention is that the defendants have to be taken as having been served either on the date when the physical service of the papers were effected through the learned Local Commissioner or where the documents were sent by email. He also submits that, in each case, where the documents were served in person, written endorsements were also received from the defendants.

**11.** The order, dated 14 March 2023, appointing local commissioners to visit the defendants' premises and execute commissions therein, does not direct service either of the summons or of the papers relating to the case, by the learned local commissioners, on the defendants. Nor does the order authorize such service by e-mail, in the event the defendants declined to accept service of the documents through the learned local commissioners. It is obvious that service, in a manner not envisaged by the CPC and not directed by the Court, is no service at all.

**12.** The plaintiff cannot, therefore, take advantage either of service of papers through the learned Local Commissioner or the service of papers through e-mail. Three factors coalesce to defeat this submission.

**13.** Firstly, in either case, what was served, at best, were the papers



relating to the case and not summons issued by the Court. The time for filing written statement under Order VIII Rule 7 of the CPC commences from the date of service of summons and not from the date of supply of papers to the defendants by the plaintiff, whether by in person or by email or any other method.

**14.** Secondly, the service through the learned Local Commissioner, is not envisaged anywhere in the CPC or the Original Side Rules of this Court as a method of service of summons in a suit. Service through the learned Local Commissioner, therefore, cannot be treated as service of summons for the purpose of Order VIII Rule 1 of the CPC.

**15.** Thirdly, insofar as service by e-mail is concerned, Dr. Chopra relies on Clause (e) of Rule 1 in Chapter VI of the Original Side Rules, to contend that the service of the papers by e-mail is also a mode of service envisaged by Rule 1(e). Rule 1(e) cannot, however, help the plaintiff in the present case, for two reasons. In the first place, as already noted, what was served, by email, were not the summons issued by the Court but papers relating to the case. Without going into the issue of whether all the papers in the case were served by e-mail, we are concerned in the present case with service of summons, as envisaged by Order VIII Rule 1 of the CPC, and not with service of documents in the case. Secondly, the provision of service by email is envisaged as one of the modes of service *which could be directed by the Court* while issuing summons. There is no reference, in the order dated 14 March 2023, issuing summons in the present case to the effect that summons could be served by e-mail. Even if,



therefore, the summons had been served by e-mail, it would be arguable as to whether such service could be treated as due service of summons as envisaged by Rule 1 in Chapter VI of the Original Side Rules and, therefore, as service of summons for the purposes of Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act.

**16.** In any event, what was served, as already noted more than once hereinabove, were not the summons issued by the Court, but only papers relating to the case.

**17.** Dr. Chopra also drew my attention what he claimed to be an admission on the part of the defendants, of service of summons, contained in IA 12485/2023, filed by the defendants under Section 5 of the Limitation Act 1963, for condonation of delay in filing the written statement. He has drawn my attention to para 7 of the said application, which reads as under:

“7. That thereafter, upon finalisation and settling of the written statement by the counsels along with senior counsel advising the Applicants, then on reopening of this Hon’ble Court on 03.07.23, the written statement was filed at the earliest possible opportunity and time available with the Applicants but there was a delay in filing the written statement as per the prescribed time, out of which the month of June, 2023 was closed due to vacations which opened on 01.07.23. *Moreover, no summons, as per instructions have been received by defendant nos.3-7 from this Hon’ble Court; & without prejudice,* service at best is to be counted from next day after when they first time appeared on 27.04.2023 before this Hon’ble Court for limitation period to start. Notwithstanding above, this application for condonation of delay is filed explaining period since last week of March, 2023 till date of first filing on 3.7.23, and hence, there is a delay of 4 days beyond period of 30 days in filing written statement.”

(Emphasis supplied)



18. The reliance, by Dr. Chopra, on para 7 of IA 12485/2023 ignores the italicized words, in the said paragraph, as extracted hereinabove. The reference to the delay in filing the written statement and the prayer for condonation thereof were, therefore, made strictly without prejudice to the contention that no summons had been received by the defendants in the suit till that date. The said paragraph cannot, therefore, be regarded as an admission by the defendants that summons had been placed reliance on the judgment of a learned Single Judge of received by them and that, therefore, there was a delay in filing the written statement.

19. Dr. Chopra has also this Court in *Harjyot Singh v. Manpreet Kaur*.<sup>4</sup>

20. In the first place, *Harjyot Singh*<sup>4</sup> was a case which arose in the context of a non-commercial suit. Times without number, the Supreme Court has held the precedential value of decisions of Courts is to be assessed and understood in the light of the facts, and the controversy which had arisen as a consequence thereof, and that a single different fact might erode the value of a precedent. There are any number of authorities for this proposition; one need only refer, for the nonce, to *Haryana Financial Corporation v. Jagdamba Oil Mills*<sup>5</sup>, in which it was expressed thus:

“19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations

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<sup>4</sup> 2021 SCC OnLine Del 2629

<sup>5</sup> (2002) 3 SCC 496



of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.”

The demographics of a suit instituted under the Commercial Courts Act are altogether different from those of an ordinary non-commercial suit. In *SCG Contracts (India) (P) Ltd. v K.S. Chamankar Infrastructure (P) Ltd.*<sup>6</sup>, the Supreme Court has clearly held that commercial litigation, governed by the Commercial Courts Act, constitutes a species of litigation *sui generis*, and that the provisions of the Commercial Courts Act have to be strictly applied. To similar effect is the judgment of the Supreme Court in *Sudhir Kumar @ S. Baliyan v. Vinay Kumar G.B.*<sup>7</sup> Applying, therefore, the *ratio decidendi* of a case, deciding a procedural issue relatable to a non-commercial suit, to a commercial suit is, therefore, inherently perilous.

21. That apart *Harjot Singh*<sup>4</sup> was not a case in which summons were never issued or served on the defendants. Summons were, in that case, actually issued by the Court and served on the defendants. The dispute was only with respect to the date of service. Para 24 of the judgment commences by making reference to a clear admission, by the defendant (in that case), to the effect that the summons were actually received by her by speed post on 5 September 2019 and electronically on 12 September 2019. As such, there could be no real

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<sup>6</sup> (2019) 12 SCC 210

<sup>7</sup> 2021 SCC OnLine 734



dispute about service of summons on the defendant in that case.

22. The Court has, in *Harjyot Singh*<sup>4</sup>, nonetheless gone on to add, as an additional consideration, the fact that on the returnable date for summons, which was 16 September 2019, the defendant was present in Court and has, thereafter, proceeded on the premise that the defendant was at least aware, on 16 September 2019, of the date of service of summons. Paras 23 to 27 and 30 of the judgment may usefully be reproduced thus:

“23. In *Desh Raj's* case<sup>8</sup>, the Supreme Court had clearly held that the time lines provided for filing of the written statement in a noncommercial suit were only directory and not mandatory. It was earnestly contended by Mr. Baruah that the said standard would be equally applicable in interpreting Rule 4 of the DHC (OS) Rules. The said contention cannot be accepted as the decision of the Division Bench in *Ram Sarup Lugani*<sup>9</sup>(*supra*) is unambiguous. The Division Bench of this Court had interpreted the words 'but not thereafter' as used in Rule 4 of the DHC(OS) Rules, as limiting the jurisdiction of this Court to condone the delay only to the period as mentioned, which in the case of written statement is 90 days. The court had also considered the decision of the Supreme Court in *Desh Raj v. Balkishan*<sup>8</sup> (*Supra*). The decision in *Ram Sarup Lugani*<sup>9</sup> (*supra*) is binding on this Court.

24. The contention that the defendant has not received the summons also cannot be accepted. *First of all, it is relevant to note that the defendant in her application (IA 2945/2020) had expressly stated that the summons were effected through speed post on 05.09.2019 and the electronic service was effected by way of an email dated 12.09.2019 by the learned counsel for the plaintiff. There is a clear admission that the defendant had received the summons on 05.09.2019 and by email on 12.09.2019. It is only as a matter of afterthought that the defendant had conducted an inspection of the records available with the Registry of this Court and has built up a case of non-receipt of summons on the basis of the notings made in the records of the Registry. Having affirmed that she had received the summons, it is not open for the defendant to contend that she had not received them. Second, there is no dispute that the defendant had received a copy of the plaint along*

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<sup>8</sup> *Desh Raj v. Balkishan*, (2020) 2 SCC 708

<sup>9</sup> *Ram Sarup Lugani v. Nirmal Lugani*, 2020 SCC OnLine Del 1353



with the copy of the order passed by this Court as well as the documents filed by the plaintiff. The defendant had also received the same by email. The returnable date for the summons was 16.09.2019 and on that date, the defendant was present in Court. She was fully aware of the case against her as well as, the fact that the Court had by the order dated 31.08.2019 directed issuance of summons and had passed ad-interim orders. The defendant thus had full knowledge of the case instituted against her and that she was required to answer the claims. According to Mr. Baruah, the summons were deemed to be served on 22.10.2019 when this Court directed the written statement to be filed. Plainly, the defendant cannot decide as to when the summons are deemed to be served on her. The defendant was fully aware of the order dated 30.08.2019 passed by this Court whereby this Court had directed issuance of summons and had passed ad-interim relief. She was also aware that she had received copy of the plaint and the application along with the documents filed by the plaintiff pursuant to the orders passed by this court. She had thereafter appeared before this Court on 16.09.2019. This is sufficient to hold that the summons are deemed to have been served on her at least on 16.09.2019.

25. The defendant now claims that she had erroneously admitted in the application filed by her that she had received the summons on 05.09.2019 by speed post and by email on 12.09.2019. This is on account of an erroneous understanding by her counsel who although was familiar with the appellate side procedure in the Supreme Court, but has no knowledge of the proceedings on the Original Side. Plainly, this Court finds it difficult to accept the said explanation. Even if, the defendant is permitted to resile from her solemn affirmation of having received the summons on 05.09.2019 and on 12.09.2019, it is clear that the summons were deemed to have been served when she appeared along with her counsel and a Senior Counsel on 16.09.2019

26. Third, *the manner as to how summons can be served is not inflexible*. At this stage, it is also relevant to refer to Section 27 of CPC which reads as under:-

"27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed [on such day not beyond thirty days from date of the institution of the suit]."

27. *It is apparent from the above that where a suit is being instituted and summons have been issued, the same 'may' be served in the manner prescribed. Thus, it is not necessary that the summons can only be served in the manner as prescribed and any*



*defect or irregularity in the same would render the summons as non-est. Clearly, the intention is that the defendant must be provided with the plaint and the documents filed by the plaintiff in order for the defendant to answer for the same. Undisputedly, the said condition has been met in this case.*

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30. In the present case, there is no ambiguity in the order dated 30.08.2019. The Court had examined the plaint; directed issuance of summons; and also passed ad-interim orders. Clearly, the defendant could be in no doubt that the court had found that the suit was properly instituted and she was required to answer the plaint. Thus, the summons stood served on her at least when she appeared before the court on 16.09.2019. This Court is unable to accept that the summons were deemed to have been served only on 22.10.2019, when time was sought on her behalf to file a written statement and not earlier.”

(Emphasis Supplied)

23. The tone and tenor of the decision in *Harjot Singh*<sup>4</sup> is unmistakable. After observing that there was a categorical admission of actual service of summons on the defendant the Court has only proceeded, in para 26 of the judgment, to rely on Section 27 of the CPC. Section 27 of the CPC envisages that “where a suit has been duly instituted, summons may be issued to the defendant to appear and answer the same and *may be served in the manner prescribed*”. The Court goes on to emphasize the use of the word “may” to hold that the manner of service of summons was not, therefore, inflexible and that even if summons were not served *stricto sensu* in the manner prescribed, they could be treated as having been served by other modes and methods in view of use of the word “may”.

24. As against this, Rule 1 in Chapter VI of the Original Side Rules as applicable to this Court specifically uses the word “shall”. The manner of service of summons as per the Original Side Rules of this



Court is, therefore, mandatory. This Rule was never under consideration before the Court in *Harjot Singh*<sup>4</sup>. There is no latitude available in that regard, as was found to exist in Section 27 of the CPC in *Harjot Singh*<sup>4</sup>. The Division Bench of this Court has, in *Ram Sarup Lugani*<sup>9</sup>, held that the Original Side Rules of this Court take prevalence over the provision of the CPC with regard to the procedure to be followed in commercial suits.

25. For all these reasons, it is clear that the decision of the coordinate Bench in *Harjot Singh*<sup>4</sup> cannot apply to the present case.

26. At this stage, Dr. Chopra interrupts to require the Court to make reference to sub rule (f)<sup>10</sup> of Rule 1 in Chapter VI of the Original Side Rules. Dr. Chopra's submission is that, by virtue of Rule 1(f) in Chapter VI, the supply of the papers relating to the case along with a notice by the Counsel would suffice as service of summons on the suit within the meaning of Order VIII Rule 1 of the CPC.

27. The submission is devoid of merit. Rule 1(f) in Chapter VI of the Original Side Rules is completely irrelevant to the issue at hand. It merely stipulates that the summons, or notice, would specify the time within which written statement, or response, is to be filed. How this Rule can be at all pressed into service to hold that merely handing over of the papers related to the suit, along with a notice from the party or the Counsel, would suffice as service of summons for the purposes of Rule 1(a) in Chapter VII of the Original Side Rules, or of

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<sup>10</sup> (f) The summons/notice shall specify the time within which the written statement/response is to be filed as per the Code or these Rules.



Order VIII Rule 1 of the CPC, defeats me.

**28.** The hard fact is, therefore, that service of summons, in the present case, has not taken place till date. No failure to file written statement within the prescribed time *from the date of service of summons* can, therefore, be attributed to the defendant. The first requirement of Order VIII Rule 10 of the CPC, therefore, remains unsatisfied.

**29.** This application, therefore, is completely bereft of merit. Issuance of notice on this application is likely to unnecessary delay proceedings. In view of the discussions hereinabove, in my considered opinion, the application fails to make out a case which deserves issuance of notice thereon.

**30.** The application is, therefore, dismissed *in limine*.

**I.A. 16399/2023 (Order XXXIX Rule 2A of the CPC)**

**31.** Issue notice. Notice is accepted on behalf of Defendants 2 to 7 by Mr. Rajat Mathur.

**32.** Reply be filed within a period of four weeks with advance copy to learned Counsel for the plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.

**33.** List on the date already fixed, i.e. 16 October 2023.



**I.A. 13885/2023 (for condonation of delay of 41 days in filing the reply)**

**I.A. 13886/2023 (for condonation of delay of 41 days in filing the reply)**

34. These are the applications on the part of the defendants for condonation of delay in filing the replies to IA 4894/2023 and IA 4895/2023. Dr. Chopra, learned Counsel for the plaintiff fairly does not oppose these applications. Accordingly, the delay is condoned and the applications are allowed.

35. Rejoinder to the reply filed by the defendants to IA 4894/2023, may be filed by the plaintiff within a period of four weeks.

36. Rejoinder to the reply filed by the defendants to IA 4895/2023 already filed.

**I.A. 12469/2023 (for delay of 13 days in filing reply)**

37. This is an application on the part of the defendants for condonation of delay in filing the reply to IA 8855/2023. Dr. Chopra, learned Counsel for the plaintiff fairly does not oppose this application. Accordingly, the delay is condoned and the application is allowed.

**I.A. 12485/2023(for condonation of delay of 4 days in filing w/s)**

38. For the reasons stated in the application, four days delay in filing the written statement is condoned.



39. The application is disposed of.

**CS(COMM) 143/2023, I.A. 16208/2023 (Order VII Rules 15A and 16 of the CPC), I.A. 16209/2023 (Chapter VII Rule 5), CRL.M.A. 19103/2023 (Section 340 CR.P.C.), I.A. 4894/2023(Order XXXIX Rules 1 and 2 of the CPC), I.A. 4895/2023(Order II Rule 2 of the CPC), I.A. 12914/2023 (E.H. of IA 8857/2023), I.A. 13369/2023 (Order XI Rule 5 of the CPC), I.A. 16208/2023(Order VII Rules 15A and 16 of the CPC) and I.A. 16209/2023 (Chapter VII Rule 5)**

40. At this juncture, Dr. Chopra draws my attention to order dated 25 August 2023 passed by the learned Joint Registrar in which he has sought clarification with respect to cloning of devices of Defendant 4, which were seized by the learned Local Commissioner Mr. Satyam Thareja. He submits that, for the present, the cloning of the data contained on the said devices may be permitted, subject to the exercise of segregation of the information to which the plaintiff would be entitled being deferred to a later stage.

41. Mr. Rao does not oppose the request. Accordingly, it is clarified that cloning of the data contained on the devices seized from Defendant 4 by the learned Local Commissioner Mr. Satyam Thareja may also be permitted, but that segregation of the data would be decided only at a later stage.

42. Renotify on 16 October 2023.

**C.HARI SHANKAR, J**

**AUGUST 29, 2023**

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