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

% Judgment delivered on: 06.09.2024

+ CS(COMM) 440/2021

TEK TRAVELS PRIVATE LIMITEDPlaintiff

Through: Mr. Aayush Kevlani and Ms. Mushan
Agarwal, Advocates

versus

GURSAHIB SINGH SETHI & ORS.Defendants

Through: Mr Abhinav Sharma with Ms Avsi
Malik and Mr Deepak Jain,
Advocates for D-1 and D-3.
Mr Siddhath Bambha and Ms Sucharu
Garg, Advocates for D-2.

**CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

**O.A. 75/2023 & I.A. 15830/2023 (by the defendant nos.1 and 3 under
Section 5 of the Limitation Act, 1963 read with Section 151 CPC seeking
condonation of delay of 295 days in filing O.A. 75/2023)**

1. The present OA has been filed by the defendant nos.1 and 3 against the impugned order dated 10.10.2022 passed by the Joint Registrar, whereby the right of the defendant nos.1 and 3 to file written statement was closed.
2. On a query posed by the Court, the learned counsel for the



appellants/defendant nos.1 and 3 fairly states that summon were served upon the defendant nos.1 and 3 on 26.10.2021, however, the right of the defendant nos.1 and 3 to file written statement was closed on 10.10.2022 i.e., after almost a period of one year.

3. He further submits that the written statement could not be filed because of the negligence of the erstwhile counsel and thus, a complaint has also been filed by the defendant nos.1 and 3 against the said counsel in the Bar Council of Delhi.

4. It is trite law that the period for filing of written statement as provided in Chapter VII Rule 4 of Delhi High Court (Original Side) Rules, 2018 is 30 days which can be further extended by 90 days but not thereafter. The use of expression “but not thereafter” makes it plain that under no circumstances the period for filing written statement can be extended beyond 120 days.

5. I am supported in my view by the decision of a Coordinate Bench of this Court in *Sachin Kumar vs. Ravi Ahuja & Ors.*, 2024 SCC OnLine Del 1312, wherein it has been held as under:

“20. In the case of Gautam Gambir v. Jai Ambay Traders, 2020 SCC OnLine Del 2621, this Court emphasized on the words “but not thereafter” mentioned in the Rule 4, of Chapter VII of the Delhi High Court Rules, 2018, to observe that these words clearly indicate that a total of 120 days granted for filing of written statement cannot be extended, and if the same is not complied with, then the Registrar may pass orders closing the right to file the same.

21. The Co-ordinate Bench in Col Ashish Khanna SM Retd v. Delhi Gymkhana Club CS(OS) 171/22, decided on 21.08.2023, while considering the similar controversy relied



upon the case of Ms. Charu Agrawal v. Alok Kalia, 2023 SCC OnLine Del 1238, Ram Sarup Lugani v. Nirmal Lugani, 2020 SCC OnLine Del 135, and Harjyoti Singh v. Manpreet Kaur, 2021 SCC OnLine Del 2629, to hold the inviolability of the hard stop period of 120 days prescribed in Chapter VII, Rule 4 of the Delhi High Court Rules, 2018, for filing of Written Statement. It was concluded that the debate of the power of the Court to condone the delay in filing the written statement beyond 120 days in a non-commercial suit, has been settled and the Courts have no power to condone this delay beyond 120 days.

22. In view of the above discussed law, it is evident that in view of Chapter VII Rule 4 of the Delhi High Court (Original Side) Rules, 2018, only a maximum extension of 90 days can be granted beyond the initial 30 days, which however is not a matter of right. Further, the words “but not thereafter” makes it unequivocally clear that in no circumstance can an extension beyond 120 (30 + 90) days be granted.”

(emphasis supplied)

6. Therefore, the reason put forth by the learned counsel for defendant nos. 1 and 3 seeking extension of time to file written statement beyond 120 days is of no relevance and the same cannot be considered by this Court.

7. In view of the above, there is no merit in the OA and the same is dismissed. In view of the dismissal of OA on merits, the I.A. 15830/2023 seeking condonation of delay in filing the OA is also dismissed as infructuous.

8. The OA 75/2023 and the IA 15830/2023, are disposed of.

OA No.45/2022 & I.A. 17463/2022 (by the plaintiff under section 151 CPC seeking condonation of delay of 70 days in filing OA No.45/2022)

9. The present OA has been filed by the plaintiff challenging the



impugned order dated 14.07.2022 passed by the learned Joint Registrar whereby the written statement of defendant no. 2 was taken on record.

10. Learned counsel appearing on behalf of the plaintiff/appellant submits that the defendant no. 2 was served with the summons in the present suit on 27.10.2021 (*as per record defendant no.2 was served on 26.10.2021*) whereas admittedly the written statement was filed only on 03.02.2022. Therefore, the filing of written statement is clearly beyond 30 days as stipulated in Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 [hereinafter referred to as 'Rules']. He submits that the learned Joint Registrar could not have taken on record the written statement filed by defendant no. 2 without there being any application filed by defendant no. 2 seeking condonation of delay in filing the written statement beyond 30 days. He submits that the filing of application seeking condonation of delay is mandatory. To substantiate his submission, reliance has been placed on the following decisions of the Hon'ble Supreme Court, as well as, of this Court:

- i. SCG Contracts (India) Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd., (2019) 12 SCC 210;*
- ii. Friends Motel v. Shreeved Consultancy LLP, 2020 SCC OnLine Del 2072;*
- iii. OK Play India Pvt. Ltd. v. A.P. Distributors & Anr., 2021 SCC OnLine Del. 4079;*
- iv. 3M Company v. Mr. Vikas Sinha, CS (Comm) 144/2019 decided on 05.07.2022;*
- v. Rachna Overseas v. Printech System, 2021 SCC OnLine Del 5332.*

11. On the other hand, the learned counsel appearing on behalf of the defendant no. 2 invites the attention of the Court to the order dated



10.01.2022 passed by the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No. 3/2020* wherein it has been directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general and special laws in respect of all judicial or quasi judicial proceedings. As a corollary, the limitation period to file written statement would commence from 01.03.2022 and therefore, the filing of written statement on 03.02.2022 is well within the statutory period provided for filing of written statement.

12. To appreciate the rival contentions of the learned counsels, apposite would it be to refer to the following directions given by the Hon'ble Supreme Court in its order dated 10.01.2022 passed in *Suo Moto Writ Petition (C) No. 3/2020* to enable the litigants to tide over the legal crisis of limitation period having been lost during the pandemic period:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding*



the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

(emphasis supplied)

13. The Hon'ble Supreme Court in *Prakash Corporates vs. Dee Vee Projects Limited*, (2022) 5 SCC 112 elaborated and further clarified that when the period is excluded, as a necessary consequence, it results in enlargement of time, over and above the period prescribed. It was further observed that exclusion of period as directed by the Hon'ble Supreme Court in *SMWP No. 3 of 2020* will to apply to the period of limitation prescribed for the suits as well as for the written statements with equal force. The relevant part of the observations reads as under:

*“28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] , this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] , this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. **When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not***



referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [Vide Section 15 of the Limitation Act, 1963.]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.

28.1. Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

28.2. ***In other words, the orders passed by this Court on 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] , 6-5-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 9 : (2021) 3 SCC (Cri) 799] , 10-7-2020 [Cognizance for Extension of Limitation, In re, (2020) 9 SCC 468] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement.***



It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15-3-2020 to 2-10-2021) could still be filed within 90 days from 3-10-2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.”

(emphasis supplied)

14. Carrying the above enunciation further, the Hon’ble Supreme Court in *Arif Azim Company Limited vs. Aptech Limited, (2024) 5 SCC 313*, in paras 83, 84 and 87 has held as under:

“83. The petitioner completed the course sometime in April and a letter to this effect was issued on 30-7-2017 by EoI, Kabul. Allegedly, ICCR made payment to the respondent on 3-10-2017. However, the right of the petitioner to raise the claim could only be said to have accrued after the petitioner made a positive assertion in March 2018 which was denied by the respondent vide email dated 28-3-2018. Another reminder through email was given by the petitioner on 29-12-2018, however, mere giving reminders and sending of letters would not extend the cause of action any further from 28-3-2018 on which date the rights of the petitioner could be said to have been crystallised.

84. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27-3-2021. However, in March 2020, the entire world was taken under the grip of the deadly COVID-19 Pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognizance of this unfortunate turn of events, this Court vide order dated 23-3-2020 passed in Cognizance for Extension of Limitation, *In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801]* directed the period commencing from 15-3-2020 to be excluded for the purposes of



computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15-3-2020 to 28-2-2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15-3-2020 would become available from 1-3-2022.

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87. The effect of the above referred order of this Court in the facts of the present case is that the balance limitation left on 15-3-2020 would become available w.e.f. 1-3-2022. The balance period of limitation remaining on 15-3-2020 can be calculated by computing the number of days between 15-3-2020 and 27-3-2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days. This period of 1 year 13 days becomes available to the petitioner from 1-3-2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13-3-2023.”

(emphasis supplied)

15. In view of the above pronouncements of the Hon'ble Supreme Court, there is a merit in the submission made by the learned counsel for the defendant no. 2 that as the limitation period of 30 days to file written statement as stipulated in Rule 4 of Chapter VII of the Rules expired on 25.11.2021 i.e. between 15.03.2020 to 28.02.2022, the said limitation period will commence from 01.03.2022, therefore, the filing of written statement by the defendant before the said date i.e. on 03.02.2022, is well within the prescribed limitation period of 30 days.

16. Since it is held that filing of written statement by defendant no.2 is



within the statutory period of 30 days, the judgments relied upon by the learned counsel for the plaintiff as mentioned in para 10 above on the aspect that delay in filing written statement beyond 30 days cannot be condoned without defendant having filed an application seeking condonation of delay, are of no relevance.

17. In view of the above, there is no merit in the OA and the same is dismissed. In view of the dismissal of OA on merits, the I.A. 17463/2022 seeking condonation of delay in filing the OA is also dismissed as infructuous.

18. The OA 45/2022 and the IA 17463/2022, are disposed of.

I.A. 15819/2024 (under Order IX Rule 7 read with Section 151 CPC filed by defendant nos. 1 and 3 seeking recall of order dated 04.11.2022)

19. Arguments heard.

20. Learned counsel for the parties have sought time to file a short note of their submissions along with the judgments they seek to rely upon. Let the same be filed.

21. Judgment reserved.

22. Interim order dated 04.10.2021 passed in I.A. 11912/2021 to continue till the next date hearing.

VIKAS MAHAJAN, J

**SEPTEMBER 6, 2024
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