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

Date of decision: 27th MAY, 2025

IN THE MATTER OF:

\+ **RFA(OS) 27/2025, CAV 185/2025, CM APPL. 28126/2025, CM APPL. 28127/2025 & CM APPL.28128/2025**

CM CORPS LTD .....Appellants

Through: Mr. Nikhil Goel, Sr. Adv. with Mr. Kaushal, Adv.

versus

RANI KAPOOR AND OTHERS .....Respondents

Through: Mr. Rajesh Yadav, Sr. Adv. with Ms. Ruchira V. Arora and Mr. Dhananjay Mehlawat, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present appeal is preferred by the Appellant/Defendant challenging the impugned Order dated 24.02.2024 passed by the Learned Single Judge, wherein the delay in filing the written statement was not condoned and thereby, proceeding under Order VIII Rule 10 CPC, the Learned Single Judge decreed the suit *vide* Judgment and Decree dated 27.03.2025.

2. Shorn of unnecessary details, the facts leading to the filing of the instant appeal, are as follows:

a. It is stated that the property bearing no. W-78A, Greater Kailash – II, New Delhi – 110048 (*hereinafter referred to as "suit property"*) is owned by the Plaintiffs, who executed a Special Power of Attorney in favour of one Sudhir Fedrick Kapoor.

b. The parties entered into a Lease Agreement dated 16.12.2013 (*hereinafter referred to as "Lease Agreement"*) regarding the suit property admeasuring 836 square yards for a period of 36 months i.e., from 31.12.2013 to 31.12.2016.

c. As per the terms of the Lease Agreement, the Appellant/Defendants were required to pay a rent of Rs. 4,00,000/- per month and a refundable security deposit of Rs. 20,00,000/- to the Plaintiffs.

d. Clause 18 of the Lease Agreement is the termination clause stating that the Appellant/Defendants shall vacate and hand-over the suit property with the expiration of lease period. Eventually, the period of lease came to an end on 31.12.2016 with efflux of time. An addendum, thereto, was entered into by the parties, thereby extending the lease period for six more years i.e., from 01.01.2017 to 31.12.2022.

e. The Appellant/Defendants were paying the rent till July, 2022 as per the terms and conditions of the Lease Agreement, however, defaulted to pay the rent from August, 2022. The extended period also ended on 31.12.2022.

f. A legal notice dated 19.12.2023 under Section 106 of the Transfer of Property Act, 1886 was served upon the Appellant/Defendants, seeking eviction of the Appellant/Defendant from the property in question.

g. Since the Appellant/Defendants failed to comply with the legal notice, the Respondents herein filed a suit bearing CS(OS) No. 238/2024 against the Appellant/Defendants seeking possession, recovery of rent arrears, mesne profits and permanent injunction.

h. As per the order dated 03.04.2024, summons was issued to the Appellant/Defendants. *Vide* Order dated 17.09.2024, the Joint Registrar of this Court recorded that no written statement has been filed by the Appellant/Defendants.

i. Thereafter, the Appellants filed their written statement along with an application for condonation of delay in filing the same. The said application was dismissed by the Joint Registrar *vide* order dated 29.10.2024 stating the following reasons :

> "*11.Perusal of record shows that the Hon'ble Court vide order dated 03/04/2024 has directed to issue summons of the suit to the defendant. The defendant was served with the summons of the suit through Speed Post on 17/05/2024. Further perusal of record shows that the defendant has filed the written statement for the first time on 26/09/2024 vide diary no.3952759, however, the same was returned under objection. The written statement of the defendant has still not come on record.*
>
> *12.From the calculation of aforesaid dates, it is evident that the defendant has failed to file the written statement*

within the extended period of 120 days. Accordingly, the captioned IA is dismissed."

j. Challenging the aforesaid Order, the Appellant/Defendants preferred a Chamber Appeal bearing OA 3/2025. By way of an Order dated 24.02.2024, the Learned Single Judge dismissed the said appeal stating that the written statement is filed beyond the period of 120 days as stipulated under the Delhi High Court (Original Side) Rules, 2018. The relevant paragraph of the same is as follows:

> "*6. Even if filing of written statement is considered of 19th September 2024, it would still be beyond the 30 days prescribed time period and beyond 120 days prescribed extension for filing of written statement, as considered by the Court. By the decision in Ram Sarup Lugani & Anr. v Nirmal Lugani & Ors. 2020 SCC OnLine Del 1353, this is not permitted and therefore, this Court does not find any infirmity in the order of the Joint Registrar*."

k. While passing the impugned order dated 24.02.2024, the Learned Single Judge also dealt with the suit bearing CS(OS) No.238/2024, wherein arguments were heard and the suit was reserved for pronouncement.

l. Accordingly, the Learned Single Judge passed the impugned Judgment dated 27.03.2025 under Order VIII Rule 10 CPC, whereby the suit was decreed directing the Defendants to vacate the suit property.

m. The order rejecting the chamber appeal filed against the Order passed by the Joint Registrar, and the Judgment dated

27.03.2025, passed by the learned Single Judge decreeing the suit, are under challenge in the present Appeal.

3. Learned Counsel for the Appellant/Defendant submitted that the Learned Single Judge was incorrect in not condoning the delay in filing the written statement. It is stated that power to condone the delay in filing written statement must be construed liberally and the objective behind the same is to merely expedite the proceedings and not to penalise the party.

4. It is contended that the Learned Single Judge was incorrect to proceed under Order VIII Rule 10 CPC as the provision is merely directory and not mandatory. It is also contended that a Judgment under Order VIII Rule 10 of the CPC cannot be passed in a mechanical manner and will defeat substantial rights of the Defendants in a suit.

5. It is further stated that the impugned judgment has been passed erroneously as the Appellant/Defendant was not given an opportunity to cross-examine the plaintiff's witnesses, which defeats the principles of natural justice. While even proceeding under Order VIII Rule 10 of the CPC, it is not discernible that the right of defence must be eliminated. The Plaintiff will have to prove his case by leading evidence.

6. *Per contra*, learned Counsel for the Respondents/Plaintiffs submits that the Learned Single Judge has rightly held that the written statement is filed beyond the prescribed period of 120 days and therefore, the same cannot be considered as per the settled principles of law. He also contends that in view of the fact that the period of lease has expired and the rent has not been paid from August, 2022, despite several opportunities being given by this Court to pay the arrears of rent, the Judgment passed by the learned

Single Judge decreeing the Suit under Order VIII Rule 10 does not call for interference by this Court.

7. Heard learned Counsel for the parties and perused the material on record.

8. Though the learned Counsel for the Respondent states that an appeal against the order of the learned Single Judge is not maintainable, learned Counsel for the Appellants states that the issue of limitation is pending before the larger bench. This Court is not inclined to enter into this academic question at this juncture in view of the settled position of law regarding the limitation as to by which time the Written Statement should be filed. This Court is, therefore, entertaining the appeal on merits.

9. The limited questions that arise for adjudication is – *one*, whether the delay in filing the written statement is liable to be condoned if filed beyond the period of 120 days; and *two*, whether the Appellant forfeits the right to lead defence when proceeded under Order VIII Rule 10 of the CPC.

10. For the sake of convenience, Rule 2 and Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, is as follows –

> *"**2**. Procedure when defendant appears.—If the defendant appears personally or through an Advocate before or on the day fixed for his appearance in the writ of summons:—*
>
> > *(i) where the summons is for appearance and for filing written statement, the written statement shall not be taken on record, unless filed within 30 days of the date of such service or within the time provided by these Rules, the Code or the Commercial Courts Act, as applicable. An advance copy of the written statement, together with legible copies of all*

documents in possession and power of defendant, shall be served on plaintiff, and the written statement together with said documents shall not be accepted by the Registry, unless it contains an endorsement of service signed by such party or his Advocate.

(ii) the Registrar shall mark the documents produced by parties for purpose of identification, and after comparing the copies with their respective originals, if they are found correct, certify them to be so and return the original(s) to the concerned party.

xxx

***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. Rule 4 of the Delhi High Court (Original Side) Rules, 2018 clearly states that filing of the written statement beyond a period of 120 days cannot be taken on record. Given that there are two similar provisions on the very

same subject, a question arises as to which provision is suitable for application to the facts of the instant case.

12. A Co-ordinate Bench of this Court in the case of Ram Sarup Lugani v. Nirmal Lugani, **2020 SCC OnLine Del 1353,** has held that the Court does not have the power to condone delay in filing the Written Statement or Replication beyond the time prescribed in the Delhi High Court (Original Side) Rules, 2018. In the said Judgment the Division Bench has observed as under:

> *"14. The term "The Court" and "Registrar" have been defined in Rule 4 that is a part of Chapter I of the Rules. On a reading of Rule 5 it is clear that the replication, if any, should be filed within a period of 30 days from the date of receipt of the written statement. The word "shall" used in the said Rule postulates that the replication must be filed within 30 days of the receipt of the written statement. The Registrar does not have the power to condone any delay beyond 30 days. The permission to condone the delay beyond the period of 30 days, lies with the court. If the court is satisfied that the plaintiff was prevented by sufficient cause or for exceptional and unavoidable reasons from filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days with a suffix appended to the Rule stating, "but not thereafter". The phrase "but not thereafter" mentioned in the Rule indicates that the intention of the rule making authority was not to permit any replication to be entertained beyond a total period of 45 days. If any other interpretation is given to the said Rule, then the words "but not thereafter", will become otiose.*
>
> *15. This is not the first time that the phrase, "but not thereafter" have been used in the statute. The said preemptory words have been used in other provisions*

that have come up for interpretation before the Supreme Court. In Union of India v. Popular Construction Co., reported as (2001) 8 SCC 470, the words "but not thereafter" were used in relation to the power of the court to condone the delay in challenging the award beyond the period prescribed under Section 34 of the Arbitration and Concilliation Act, 1996 and the Supreme Court observed as below:—

> *"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.*
>
> *****
>
> *16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the*

period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

> *"where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court".*
>
> *This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."* *(emphasis supplied)*

16. In Singh Enterprises v. Commissioner of Central Excise, Jamshedpur, reported as (2008) 3 SCC 70, on interpreting Section 35 of the Central Excise Act, which contains similar provisions, the Supreme Court has observed as under:

> *"8. The Commissioner of Central Excise(appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily*

provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be available for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision of order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section(1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period." *(emphasis supplied)*

17. After referring to the above decision, in Commissioner of Customs and Central Excise v. Hongo India Private Limited, reported as (2009) 5 SCC 791, the Supreme Court went on to observe as under:

"30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which

provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.

X XXX

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

X XXX

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court." (emphasis supplied)

18. We may also profitably refer to Bengal Chemists and Druggists Association v. Kalyan Chowdhury, reported as (2018) 3 SCC 41, where while examining the provisions of the Companies Act, the Supreme Court made the following observations:

"3. Before coming to the judgments of this Court, it is important to first set out Section 421(3) and Section 433 of the Act. These provisions read as follows:

> *"421. Appeal from orders of Tribunal.—(1)-(2) * * **
>
> *(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*
>
> *Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. ...*
>
> * * *
>
> *433. Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be."*

4. A cursory reading of Section 421(3) makes it clear that the proviso provides a period of limitation different from that provided in the Limitation Act, and also provides a further period not exceeding 45 days only if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. Section 433 obviously cannot come to the aid of the appellant

because the provisions of the Limitation Act only apply "as far as may be". In a case like the present, where there is a special provision contained in Section 421(3) proviso, Section 5 of the Limitation Act obviously cannot apply.

5. Another very important aspect of the case is that 45 days is the period of limitation, and a further period not exceeding 45 days is provided only if sufficient cause is made out for filing the appeal within the extended period. According to us, this is a peremptory provision, which will otherwise be rendered completely ineffective, if we were to accept the argument of the learned counsel for the appellant. If we were to accept such argument, it would mean that notwithstanding that the further period of 45 days had elapsed, the Appellate Tribunal may, if the facts so warrant, condone the delay. This would be to render otiose the second time-limit of 45 days, which, as has been pointed out by us above, is peremptory in nature."

(emphasis supplied)

19. In P. Radhabai v. P. Ashok Kumar, reported as (2019) 13 SCC 445, while construing the phrase, "but not thereafter" used in the proviso to sub section (3) of Section 34 of the Arbitration and Concilliation Act, the Supreme Court held thus:

"32.4. The limitation provision in Section 34(3) also provides for condonation of delay. Unlike Section 5 of the Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause. The crucial phrase "but not thereafter" reveals the legislative intent to fix an outer boundary period for challenging an award.

X XXX

33.2. The proviso to Section 34(3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates, "but not thereafter". The use of the phrase "but not thereafter" shows that the 120 days' period is the outer boundary for challenging an award. If Section 17 were to be applied, the outer boundary for challenging an award could go beyond 120 days. The phrase "but not thereafter" would be rendered redundant and otiose. This Court has consistently taken this view that the words "but not thereafter" in the proviso of Section 34(3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt. (State of H.P. v. Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605], Assam Urban Water Supply &SewerageBoard v. Subash Projects & Mktg. Ltd. [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] and Anilkumar Jinabhai Patel v. PravinchandraJinabhai Patel [Anilkumar Jinabhai Patel v. PravinchandraJinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC (Civ) 141].)

34. In our view, the aforesaid inconsistencies with the language of Section 34(3) of the Arbitration Act tantamount to an "express exclusion" of Section 17 of the Limitation Act."

(emphasis supplied)

20. In New India Assurance Company Limited v. Hili Multipurpose Cold Storage Private Limited, reported

as (2020) 5 SCC 757, the issue before the Supreme Court was whether Section 13(2)(a) of the Consumer Protection Act, 1986 that provides for the respondent/opposite party to file its response to the complaint within 30 days or such extended period, not extending 15 days, should be read as mandatory or directory i.e. whether the District Forum would have the power to extend the time for filing the response beyond the period of 15 days, in addition to 30 days. The Supreme Court has answered the said question in the following words:

> *"20. The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be to the satisfaction of the authority concerned. No such discretion has been provided for under Section 13(2)(a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific provision of the statute is not within the jurisdiction of the courts, and if it is so done, it would amount to legislating or inserting a provision into the statute, which is not permissible.*
>
> *X XXX*
>
> *25. The contention of the learned counsel for the respondent is that by not leaving a discretion with*

the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as there could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days. In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it.

X XXX

27. It is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground." (emphasis supplied)

21. A conspectus of the decisions referred to above leaves no manner of doubt that where ever the phrase "but not thereafter" has been used in a provision for setting a deadline, the intention of the legislature is to treat the same as a preemptory provision. Thus, if Rule 15 of the DHC Rules mandates filing of a replication within a period of 30 days reckoned from the date of receipt of the written statement, with an additional period of 15 days provided and that too only if the court is satisfied that the plaintiff has been able to demonstrate that it was prevented to do so by sufficient cause or for exceptional and unavoidable reasons, can the time for filing the replication be extended for a further period not exceeding 15 days in any event, with costs imposed on the plaintiff. The critical phrase "but not thereafter" used in Rule 15 must be understood to mean that even the court cannot extend the period for filing the replication beyond the outer limit of 45 days

provided in the DHC Rules. Upon expiry of the said period, the plaintiff's right to file the replication would stand extinguished. Any other meaning sought to be bestowed on the above provision, would make the words "but not thereafter", inconsequential.

22. The next contention of Mr. Mehta that the words "the Registrar shall forthwith place the matter for appropriate orders before the court" used in Rule 5 of the DHC Rules indicates that the court would still have the power to accept a replication filed beyond a period of 45 days, is also untenable. The Supreme Court has emphasized that the answer to the problem as to whether a statutory provision is mandatory or is directory in nature, lies in the intention of the law maker, as expressed in the law itself. The words "replication, if any, shall be filed within 30 days of the receipt of the written statement" and further, the words "further period not exceeding 15 days, but not thereafter" used in Rule 5 will lose its entire meaning if we accept the submission made on behalf of the appellants that even if the timeline for filing the replication cannot be extended by the Registrar, there is no such embargo placed on the court.

23. The court must start with the assumption that every word used in a statute, has been well thought out and inserted with a specific purpose and ordinarily, the court must not deviate from what is expressly stated therein. The period granted for filing the replication under Rule 15 of the DHC Rules is only 30 days and on expiry of 30 days, the court can only condone a delay which does not exceed 15 days over and above 30 days and that too on the condition that the plaintiff is able to offer adequate and sufficient reasons explaining as to why the replication could not be filed within 30 days. As observed earlier, since the terms 'Court' and 'Registrar' have been defined in the DHC Rules, Rule 5

requires that the court alone can extend the time to file the replication beyond the period of 30 days from the date of receipt of the written statement. Even the discretion vested in the court for granting extension of time is hedged with conditions and the outer limit prescribed is 15 days. If the replication is not filed within the extended time granted, the Registrar is required to place the matter back before the court for closing the right of the plaintiff to file the replication.

24. A reading of the relevant provisions of the DHC Rules shows that it is a special provision within the meaning of Section 29(2) of the Limitation Act (for short 'the Act'), that contemplates that where any special or local law prescribes a time limit that is different from the one provided for under the Limitation Act, 1963, then Section 4 to Section 14 of the Limitation Act, 1963 would be expressly excluded. It is well settled that even in a case where the special law does not exclude the provisions of Section 4 to Section 14 of the Limitation Act, 1963 by an express provision or reference, then too, if it is clear from the mandate or the language of the statute, the scheme of the special law will exclude the application of Section 4 to Section 14 of the Limitation Act, 1963. (Ref :Hukumdev Narain Yadav v. Lalit Narain Mishra, reported as (1974) 2 SCC 133).

25. It is equally well settled that when the provision of a law/statute prescribes specific provisions, then those provisions cannot be sidestepped or circumvented by seeking to invoke the inherent powers of the court under the statute. The principles required to be followed for regulating the inherent powers of the court in the context of applying the provisions of Section 151 CPC, have been highlighted in State of Uttar Pradesh v. Roshan Singh, reported as (2008) 2 SCC 488, wherein the Supreme Court has observed as under:

"7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.

8. The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can

> *only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act.""*

13. Although it is an argument of the Appellants that the foregoing Judgment deals with Rule 5 of the Delhi High Court (Original Side) Rules, 2018, whereas the present case deals with Rule 4 of the Delhi High Court (Original Side) Rules, 2018, this Court does not find any relevance in the said argument as the said judgment specifically deals with the interpretation of the language adopted in the said provision.

14. Further, the Delhi High Court (Original Side) Rules, 2018, being a special legislation always overrides a general legislation like CPC until and unless the special law is silent on any particular aspect. The said stance is fortified by this Court in the case of Charu Agrawal v. Alok Kalia, **2023 SCC OnLine Del 1238**, wherein the Learned Single Judge heavily relied on the law laid down in Ram Sarup Luagni (supra). The Learned Single Judge in the said case also points out the relevance and applicability of Ram Sarup Luagni (supra), thereby reiterating that the delay cannot be condoned if a written statement is filed beyond the said 120 days as mentioned under Rule 4 of the Delhi High Court (Original Side) Rules, 2018. The learned Single Judge has observed as under:

> *"25. It would be pertinent to note that the view taken in Ram Sarup Lugani and the correctness thereof does not appear to have been doubted by any coordinate Bench of the Court. At least the attention of this Court was not drawn to any decision which may have either departed*

from the settled view as flowing from that decision or having even expressed a doubt with respect to the correctness of the enunciation of the legal position in Ram Sarup Lugani.

26. That then takes the Court to deal with the recent decision rendered in Amarendra Dhari Singh. It must at the outset be noted that the said decision does take note of Ram Sarup Lugani as well as another judgment pronounced by a learned Judge of the Court in Harjyot Singh v. Manpreet Kaur13. Upon due consideration of the judgments of the Supreme Court in Desh Raj and Salem Advocate Bar Association, T.N. v. Union of India14, the learned Judge has held as under:—

> *"23. In Desh Raj's case, 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 (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 (Supra). The decision in Ram Sarup Lugani (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 wereeffected 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 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. Proceeding then to deal with the conclusions which were recorded in Ram Sarup Lugani, the learned Judge in Amarendra Dhari Singh has observed as follows:—

> *"29. The Division Bench laying emphasis on the words 'but not thereafter', held that the Court cannot extend the period for filing the replication beyond the outer limit of 45 days as mandated in the Rules, and upon expiry of the said period, the plaintiff's right to file the replication would stand extinguished. However, it must be noticed that unlike Rule 4 of the Rules which states that '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', no such discretion was vested in the Registrar or the Court by Rule 5 of the Rules. Rule 5, in fact, mandates the Registrar to forthwith place the matter for appropriate order before the Court. This difference in language used cannot also be said to be without any purpose. The judgment in Ram Sarup Lugani (supra), therefore, cannot govern the interpretation to be placed on Rule 4 of the Rules.*
>
> *30. In Harjyot Singh (supra), the learned Single Judge of this Court, placing reliance on the Ram Sarup Lugani (supra), held that the Court does not have the power to condone a delay of beyond 90 days in filing of the written statement. However, in holding so, the learned Single Judge did not take notice of the difference between Rule 4 and Rule 5 of the Rules, as has been highlighted hereinabove. It also did not take note of the earlier judgment of the Division Bench of this Court in Esha Gupta*

(supra), which taking note of Rule 4 of the Rules and placing reliance on Desh Raj (supra), condoned the delay in filing of the written statement beyond the period of 120 days of service of summons.

31. In view of the above, it is held that though normally the learned Registrar/Court, in a non-commercial Suit, shall not condone the delay in filing of the Written Statement beyond a period 120 days of the service of summons on the defendant, the learned Registrar/Court may, for exceptionally sufficient cause being shown by the defendant for not filing the written statement even within the extended time, grant further extension of time to the defendant to file the Written Statement. On such exceptionally sufficient cause been shown by the defendant, the Court is not powerless. It must exercise the discretion vested in it to ensure that procedural law does not trump over the endeavour to ensure that justice is done and the defendant is not condemned unheard. Again, even while exercising such discretion in favour of the defendant, the Court may adequately compensate the plaintiff and burden the defendant with exemplary costs so that injustice is not done to the plaintiff as well. The above cited test propounded by the Supreme Court in Kailash (supra) shall have to be kept in view by the Court while considering an application filed by the defendant seeking condonation of delay in filing of the written statement beyond 120 days of the receipt of the summons."

28. As would be apparent from the aforesaid conclusions which stand recorded in Amarendra Dhari Singh, the learned Judge appears to have

taken the view that notwithstanding the usage of the expression "but not thereafter" in Rule 4, the penultimate part of that Rule, and which in the opinion of the learned Judge conferred a discretion upon the Registrar to either close the right to file a written statement or to grant further time, clearly appeared to suggest that the said power of condonation would still be available notwithstanding the maximum period as prescribed in that Rule having lapsed. While seeking to explain the decision in Ram Sarup Lugani, the learned Judge held that the difference between the language of Rule 4 and 5 would be crucial and decisive and thus the Registrar being empowered to extend time beyond the maximum prescribed notwithstanding the use of the expression "but not thereafter". It becomes significant to recall here that a submission was in fact addressed before the Division Bench that the stipulation of the matter being placed before the Court after the maximum period had expired in terms of Rule 5 would appear to suggest that the prescription of time in that provision was not inviolable. The said contention was soundly rejected by the Division Bench in light of the peremptory language employed in the Rule.

29. Similarly, the decision in Harjyot Singh was sought to be explained with the learned Judge observing that the Court had failed to notice the distinction in the language employed in Rules 4 and 5 and that it had not noticed the judgment of the Court in Esha Gupta. Suffice it to note at this juncture that the decision in Esha Gupta rested principally on Order VIII and the decisions rendered in the context of that provision. However, that analogy as would be evident from the preceding parts of this decision, had been stoutly

> *negated in Ram Sarup Lugani which had come to be delivered after the judgment in Esha Gupta. Additionally, it may be noted that the decision in Esha Gupta had in any case failed to consider the earlier decisions of the Court and which had categorically held that the principles underlying Order VIII could not have been imputed to construe the Rules of the Court.*
>
> *30. The learned Judge further observed that this Court while framing the Rules consciously chose not to adopt the language as employed in the Commercial Courts Act, 2015. This, according to the learned Judge, would be indicative of the intent to preserve the discretion which stands vested in the Registrar notwithstanding the maximum period of 120 days having expired. Suffice it to state that those provisions do not employ the phrase "but not thereafter" at all."*

This Court is in agreement with the observation of the learned Single Judge.

15. In the instant case, summons was directed to be issued to the Defendants on 03.04.2024. As per the record, the service was completed only on 17.05.2024. The written statement was not filed by the Defendants and was filed only on 19.09.2024, thereby exceeding the stipulated period of 120 days.

16. Therefore, given the strictness of the language adopted by Rule 4 of the Delhi High Court (Original Side) Rules, 2018, which explicitly states *"but not thereafter"*, written statement filed beyond 120 days cannot be accepted and delay, thereto, cannot be condoned.

17. Coming to the second aspect, it is the case of the Appellant that right to defend themselves or opportunity to cross-examine the plaintiff's

witnesses was not provided to them while proceeding under Order VIII Rule 10 of the CPC.

18. Order VIII Rule 10 of the CPC reads as under -

> *"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 shall be drawn up:]*
> **[Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.]"*

19. The learned Counsel for the Appellants contends that while dealing with an application for condonation of delay, the Courts are required to be liberal in condoning the delay as the ultimate intent is not to defeat the rights of either of the parties. The very same intention has been reiterated, time and again, by the Courts with respect to the procedure laid down in Order VIII Rule 10 of the CPC. The Apex Court in C.N. Ramappa Gowda Vs. C.C. Chandregowda, **(2012) 5 SCC 265** explained the objective and scope of the said procedure, which is as follows –

> *"**25.** We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [**Ed.**: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and*

proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. *But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."* (emphasis supplied)

20. It is trite law that if the Courts find it satisfactory that it should proceed under Order VIII Rule 10 of the CPC, a judgment shall be passed against the defendant or otherwise as it thinks fit. However, while passing such judgment, the Courts shall ensure on what basis a decree was passed.

This position is fortified by the Apex Court in the case of Shantilal Gulabchand Mutha v. Tata Engg. & Locomotive Co. Ltd.**, (2013) 4 SCC 396,** which is observed as follows –

> *"**5.** This Court in Balraj Taneja v. Sunil Madan [(1999) 8 SCC 396 : AIR 1999 SC 3381] dealt with the issue and held that even in such fact situation, the court should not act blindly on the averments made in the plaint merely because the written statement has not been filed by the defendant traversing the facts set out by the plaintiff therein. Where a written statement has not been filed by the defendant, the court should be little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly by passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint.* ***It is a matter of court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who failed to file the written statement. However, if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. The power of the court to proceed under Order 8 Rule 10 CPC is discretionary.***
>
> ***6.*** *The Court in Balraj Taneja case [(1999) 8 SCC 396 : AIR 1999 SC 3381] further held that "judgment" as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. Therefore, the judgment should be a self-contained*

document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

***

9. *In view of the above,* ***it appears to be a settled legal proposition that the relief under Order 8 Rule 10 CPC is discretionary, and court has to be more cautious while exercising such power where the defendant fails to file the written statement. Even in such circumstances, the court must be satisfied that there is no fact which needs to be proved in spite of deemed admission by the defendant, and the court must give reasons for passing such judgment, however, short it be, but by reading the judgment, a party must understand what were the facts and circumstances on the basis of which the court must proceed, and under what reasoning the suit has been decreed****."*

(emphasis supplied)

21. A perusal of the plaint filed by the Respondent in CS (OS) No.238/2024 reflects that the facts mentioned therein are ascertainable and documents to that effect have been provided on record as well. Therefore, while proceeding under Order VIII Rule 10 of the CPC, as long as the averments in the plaint are clear and determinable, unless disputed or raises any doubt of such dispute, a judgment *shall* be passed against such party or in relation of the suit *as the Court thinks fit.*

22. In the present case, the averments in the plaint reveal that the parties have entered into a Lease Agreement and the same came to an end on 31.12.2016 with efflux of time. To extend the lease period, the parties have

also entered into an Addendum, wherein the lease expires on 31.12.2022. The Suit was filed after the lease expired. It is pertinent to mention that the foregoing facts are ascertainable from mere reading of the plaint and the existence of the lease deed and expiration thereof need not be proved. The Appellants have defaulted in payment of rent. However, the said detail does not call for the Defendant to prove as the same is explicitly ascertainable. In view of the fact that despite there being enough opportunities for the Appellant herein to pay the arrears of rent, the money was not paid and, therefore, the Appellant is only a tenant by sufferance, who has to be evicted from the property in question. Viewed in this light, the Plaintiff/Respondent herein need not prove his case by leading evidence and, therefore, the Order passed by the learned Single Judge under Order VIII Rule 10 of the CPC does not require any interference from this Court.

23. Moreover, the relevant documents such as the site plan, Lease Agreement, Addendum, tracking reports, Special Power of Attorney etc. have been made part of the plaint and the perusal of the same establishes the relationship as well as aids in disposal of the suit. This Court goes one step further and peruses the written statement and documents attached therein, which was rejected by the Learned Single Judge. The documents therein such as emails and chats exchanged between them are not relevant in proving the existence of Lease Agreement and the same do not dispute the already ascertainable facts mentioned in the plaint. Therefore, the impugned judgment was not passed in prejudice to the Appellant.

24. Accordingly, the impugned judgment and order passed by the Learned Single Judge is, hereby, upheld.

25. The instant appeal is dismissed. Pending applications, if any, are also dismissed.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHANSHANKAR, J

MAY 27, 2025
SM