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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 17th September, 2024*

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FAO(OS) 20/2023**VIKRANT KHANNA & ORS.**

.....Appellants

Through: Ashutosh Lohia with Ms. Shraddha Bhargava, Mr. Rohit Saraswat, Ms. Princy Sharma, Mr. Gaurav Anand, Mr. Sharan Mehta and Mr. Karan Sharma (M-8383015803).

versus

SMT. AMITA LAMBA & ANR.

.....Respondents

Through: Mr. Rajneesh Vats, Advocate.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Plaintiff/Appellant under Section 10(1) of the Delhi High Court Act, 1966 read with Section 104 and Order XLVIII Rule 1 of the Code of Civil Procedure, 1908 challenging the impugned order dated 10th January, 2023, passed by the Id. Single Judge. By the impugned order, the Id. Single Judge permitted the written statement of the Defendant/Respondent to be taken on record, subject to payment of Rs. 1 lakh as costs to the Plaintiff/Appellant.

Background

3. The suit from which the present appeal emanates is one for recovery of a sum of Rs.7,95,38,338/- filed by the Plaintiff/Appellant against the Defendants/Respondents. The brief facts of the case are that on 30th October,



2021 an advance copy of the plaint was served to the Defendant/Respondent, and on 26th November, 2021 summons were issued to the Defendant/Respondent by the Id. Single Judge. On 11th March, 2022 the Plaintiff/Appellant was directed to file certain documents including certain bills/vouchers, and the Defendant/Respondent was directed to file the written statement after four weeks from supply of the said documents. As per the Plaintiff/Appellant the documents in terms of the order dated 11th March, 2022 were filed on 25th March, 2022. The order of the Joint Registrar dated 11th March 2022, reads:

*“2. Learned counsel for the defendants submits that he shall be filing vakalatnama on behalf of the defendants during the course of the day. It is further submitted by learned counsel for the defendants that **the plaintiffs have moved an application under Order VII Rule 1 CPC seeking exemption from filing certain bills/vouchers etc. which was allowed by the Hon’ble Court however till date those documents have not been placed on record neither copy has been supplied to the defendants.***

*3. Learned counsel for the plaintiffs submits that **needful shall be done within two weeks.***

*4. **Let the needful be done accordingly with advance copy to the defendants after which the defendants may file written statement, reply to the interim application and affidavit of admission/denial within four weeks.***

4. The Plaintiff/Appellant preferred an application under Order VIII Rule 10 of the Code of Civil Procedure, 1908, and notice was issued in the said application on 26th July, 2022. It is stated that during pendency of the aforesaid application, on 15th September, 2022, the Plaintiff/Appellant in



response to the Id. Joint Registrar's query submitted that he would obtain instructions regarding filing of additional documents. The Id. Joint Registrar also granted the Defendant/Respondent additional time of four weeks from the supply of said documents for *inter alia* filing its written statement. The relevant portions of the order dated 15th September, 2022 are reproduced:

"5. Learned counsel for plaintiff has been asked whether some more documents are required to be filed in terms of application u/O VII Rule 1 CPC as referred in order dated 11.03.2022 to which he has stated that he will have to take instructions from his client.

6. It is submitted by learned counsel for plaintiff that he will take appropriate steps within two weeks.

7. Let the advance copy of the said documents if any, be supplied to the defendants after which the defendants may file written statement, reply to interim application and affidavit of admission/ denial within 4 weeks."

5. Thereafter, on 6th October, 2022, it is stated that the Plaintiff/Appellant submitted before the Id. Joint Registrar that no further documents were to be filed in terms of the order dated 11th March, 2022. The Defendant/Respondent was granted further time of two weeks for filing its written statement along with affidavit of admission and denial. The relevant portions of the order dated 6th October, 2022 are reproduced:

*"5. Heard. Perusal of previous order dated 15.09.2022 would reflect that a query was put to Id. Counsel appearing on behalf of plaintiff as to whether some more documents are required to be filed in terms of application under Order VII Rule 1 of CPC as referred in order dated 11.03.2022, to which, he had stated that he will have to take instructions from his client. **Ld.***



Counsel for plaintiff appearing today has submitted that no further document is required to be filed in terms of application under Order VII Rule 1 of CPC as referred in order dated 11. 03 .2022.

6. Today, time has been sought on behalf of the defendant for filing written statement stating that he was not aware as to whether any further document is to be filed on behalf of the plaintiff in terms of application under Order VII Rule 1 of CPC.

7. Heard. In the present scenario, the defendant may file written statement and affidavit of admission/denial of documents within two weeks with advance copy to the opposite party, who may file replication and affidavit of admission/denial of documents within two weeks thereafter.

6. It is stated that on 29th October, 2022, the Defendant/Respondent filed its written statement, *albeit*, without the affidavit of admission and denial.
7. The Plaintiff/Appellant on 31st October, 2022 filed a chamber appeal being *O.A. No. 50/2022* assailing the orders dated 15th September, 2022 and 6th October, 2022, passed by the Id. Joint Registrar.
8. The Id. Single Judge on 10th January, 2023, *vide* the impugned order disposed of the chamber appeal taking the written statement on record subject to cost of Rs. 1 lakh. Thereafter, the present Appeal was preferred by the Appellant/Plaintiff, against the order passed by the Id. Single Judge.
9. Mr. Ashutosh Lohia, Id. Counsel submits that the prescribed time under the DHC (OS) Rules 2018 had clearly expired and thus the written statement could not have been taken on record. It is argued on behalf of the Respondent by Mr. Rajneesh Vats, Id. Counsel that the documents relied upon by the Plaintiff having not been finalised the Joint Registrar gave further time to the



Defendant to file the written statement. Thus the written statement is not beyond time.

Analysis & Findings:

10. The first issue that arises in the present appeal is whether Rule 4, Chapter VII of the Delhi High Court (Original Side) Rules, 2018 (hereinafter, ‘DHC Original Side Rules’), which prescribes period of 30 days, that may be extended for a period not exceeding 90 days, for filing the written statement even in non-commercial matters, is mandatory or directory. The said Rule is reproduced hereunder:

“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. This issue has now been settled by the Id. Division Bench in **Manhar Sabharwal v. High Court of Delhi (2024:DHC:6406)**, wherein the constitutional validity of the said Rule was challenged on the grounds of unfair discrimination and unequal treatment of litigants. In the said judgment,



Id. Division Bench has observed as under:-

“14. Section 7 of the DHC Act confers authority on the High Court to make Rules with respect to practice and procedure for the exercise of its original civil jurisdiction. The words „practice and procedure” have a very wide connotation, and will include the power to regulate and specify the method, by which the court will conduct its proceedings. (See: Akash Gupta Vs. Frankfinn Institute of Airhostess Training, 2006 SCC OnLine Del 66)

15. The position that emerges is that Rule 4 of Chapter VII of DHC Original Side Rules, has been framed under Section 129 of the CPC and Section 7 of the DHC Act. Section 129 of the CPC empowers the High Court to regulate its own procedure in exercise of its civil jurisdiction. Section 7 of the DHC Act further empowers this Court to make Rules and Orders with respect to practice and procedure for exercise of its ordinary original civil jurisdiction. The DHC Original Side Rules, being special law, will prevail over the CPC, and have an overriding effect over the general provisions of the CPC.

16. The plea raised by the petitioners regarding Rule 4, Chapter VII of the DHC Original Side Rules, being discriminatory in nature, is totally misplaced. The very distinction, between procedures of the High Court and Civil Court, is found ingrained in Section 129 of the CPC. The said Section recognizes special Rules for the High Court, and thereby, itself makes a distinction between High Court and Civil Court. When the CPC itself envisages distinction in the practice and procedure between High Court and Civil Court, the Rules framed thereunder, cannot be challenged on the anvil of discrimination.

17. The High Court is within its authority and



jurisdiction to frame Rules of practice and procedure as to its original civil procedure. The very fact that such an authority has been conferred on the High Court, and such a provision exists in the CPC, which confers such authority on the High Court, envisions difference in the Rules of practice and procedure between a High Court, and a Civil Court.

18.1 The reliance by the petitioners on the judgment in the case of Kailash Vs. Nanhku (supra)⁵, is totally misplaced. The said judgment was in the context of interpretation of Order VIII Rule 1 of CPC. Rule 4, Chapter VII of DHC Original Side Rules was not a subject matter of discussion in the said judgment. Even otherwise, Rule 4, Chapter VII of DHC Original Side Rules itself was introduced only in the year 2018. Consequently, in view of Section 129 of CPC, the Original Side Rules of the High Court prevail over the provisions of the CPC.

18.2 The position in the present case is totally different as Section 129 of CPC, which empowers the High Court to frame its own Original Side Rules, is a non-obstante clause and itself excludes the operation of other provisions of the CPC, while conferring jurisdiction on the High Court to frame its Rules. Thus, in case of any inconsistency between the provisions of the DHC Original Side Rules and the provisions of the CPC, the DHC Original Side Rules shall prevail. The judgment relied upon by the petitioners is not applicable to the facts and circumstances of the present cases.

18.3 Therefore, Rule 4 Chapter VII of DHC Original Side Rules cannot be challenged on the ground of being contrary to the aforesaid judgment, which was delivered in the context of Order VIII Rule 1 CPC. The amended provisions of Order VIII Rule 1 CPC,



would not apply to the suits on the Original Side of the High Court, and such suits would continue to be governed by the High Court Original Side Rules.

19. Reliance by the petitioners on the judgment in the case of *Raj Kumar Yadav (supra)*⁶, to contend that statutory period of limitation cannot be taken away by the Rules framed by the High Court governing its procedure, is again, misconceived. The said judgment was rendered in an Election Petition, wherein, the High Court Rules in the said case stipulated that an Election Petition could be filed only in the open court. In the said case, the Election Petition was presented ten minutes after the Judge had retired to his chamber. The Representation of People Act, 1951 stipulated limitation under Section 81 of the said Act, to expire on the 45th day from the date of election. The word “day” was interpreted to cover a period of twenty four hours, to include period till midnight. It was in this context that it was held that the limitation period would continue till midnight of the last day, and non-acceptance of the Election Petition on the ground of its presentation after the Judge had risen for the day, was rejected.

20. Similarly the judgments in the cases of *Salem Advocate Bar Association (supra)*⁷ and *Sambhaji (supra)*⁸, are not applicable to the present cases, as the said judgments were dealing with Order VIII Rule 1 of CPC. As discussed in the preceding paragraphs, the operation of the said provision to Original Side of this Court, stands excluded and the DHC Original Side Rules, shall operate to govern the practice and procedure of the Original Side of this Court.

21. Section 129 CPC expressly gives the power to the High Court to make Rules, notwithstanding the provisions of the CPC, meaning thereby, the High



Court is in its authority to frame Rules that may be contrary to other provisions of the CPC. Therefore, relying on judicial interpretations of the provisions of the CPC, to challenge Rule 4 Chapter VII of DHC Original Side Rules, is totally fallacious.

22. The petitioners have not challenged Section 129 CPC, which refers to the Rules framed by a High Court, having overriding effect over the provisions of the CPC, in view of the non-obstante clause contained therein. The petitioners have also not challenged Section 7 of the DHC Act that empowers the High Court to make Rules and Orders, with respect to Practice and Procedure for exercise of its ordinary original civil jurisdiction. Thus, when plenary powers of this Court to frame the Original Side Rules, are recognized and accepted, the petitioners have not been able to establish any case that the exercise of such powers by this Court, and the Rules framed thereunder, are unconstitutional in any manner.

23. For the foregoing reasons, the present petitions are held to be devoid of any merits. Accordingly, the same are dismissed, along with the pending applications.”

12. The challenge to Rule 4, Chapter VII of DHC Original Side Rules was therefore rejected by the Id. Division Bench, and the said Rule would thus be applicable to all suits before the Delhi High Court (Original) Side, irrespective of whether they are commercial or non-commercial suits. Further, the time period for filing of written statement as prescribed in the said Rules would be mandatory.

13. Considering the above, observations of the Id. Single Judge in the impugned order, holding the time prescribed under Rule 4, Chapter VII, of DHC Original Side Rules for filing the written statement as directory is no



longer good law.

14. However, a reading of Chapter IV Rule 1 of the DHC Original Side Rules along with the Order VII Rule 14 CPC leaves no doubt that all the documents that the Plaintiff relies upon in support of his claim, and which are in power and possession of the Plaintiff, shall be filed with the plaint. In terms of Order V Rule 2, the Defendant is to be served along with the summons a copy of the plaint and full set of documents which the Plaintiff relies upon in support of his claim. Filing of additional documents could extend the time for filing written statement, depending upon the facts of the case, as held in ***ITD Cementation India Ltd. v. Indian Oil Corporation Limited & Anr.*** (2023:DHC:7311). The observation of the Court therein are as under:

“12. Thus, it is clear that a plaint is required to be accompanied by full set of documents as filed on behalf of the plaintiff for service upon the defendants. In the present case, though the summons were served upon the Appellant/defendant no. 1 on 04th January, 2018, the same cannot be considered to be a complete service. This is for the reason that additional documents were filed by plaintiff firstly on 20th February, 2018 and secondly on 19th April, 2018. Therefore, only when complete set of documents were supplied to the Appellant/defendant no. 1 by the plaintiff on 19th April, 2018 that the service to Appellant/defendant no. 1 was completed.

*13. Similarly, in the case of **Sunil Alagh Vs. Shivraj Puri and Anr.**, this Court has held in categorical terms that service in the suit cannot be said to be complete unless complete paper book of the suit is supplied to defendants. Thus, it has been held as follows:*

“4. In my opinion the service of the defendant no. 1 in the suit cannot be said to be complete unless complete paper book



of the suit is supplied to the defendant no. 1. Surely it cannot be the position in law that even if the defendant has not been supplied with the paper book of the suit yet the period of 120 days will commence for filing of the written statement failing which the right to file written statement shall stand closed.

5. From the order dated 10.04.2007, as reproduced above, it is quite clear that the copy of the plaint and documents was supplied by counsel for the plaintiff to counsel for defendant no. 1 on 10.04.2017. Merely because such a prayer was not made earlier would not mean that defendant no. 1 would have received copy of the paper book prior to 10.04.2017. The period of 120 days will therefore necessarily commence only on 10.4.2017 and not earlier.”

(emphasis supplied)

14. In view of the aforesaid discussion, it is evident that the service can be said to be completed upon Appellant/defendant no. 1 only on 19th April, 2018 when further additional documents filed by plaintiff were served upon it. In view thereof, the written statement filed on behalf of Appellant/defendant no. 1 on 05th May, 2018 was within limitation.”

15. Accordingly, the time for filing written statement shall run from the date of service of summons to the Defendant, along with a copy of the plaint and all documents, and not at a later date.

16. Coming to the facts of the present case, the question to be decided in light of the aforesaid, is whether the written statement filed beyond the prescribed limit ought to have been taken on record or not by the Id. Single



Judge.

17. The said issue gets complicated considering the various orders which have been passed in the present case by the Id. Joint Registrar. A perusal of the same reveals the following aspects-

- (i) Initially in November 2021, the Plaintiff had sought exemption from filing bills/vouchers and time for filing of the same was extended vide the Joint Registrar's order dated 11th March 2022.
- (ii) The Plaintiff/Appellant had filed an application under Order VIII Rule 10 in which notice was issued on 26th July, 2022.
- (iii) On 15th September, 2022, the Plaintiff/Appellant in response to a query from the Id. Joint Registrar, submitted that he would obtain instructions regarding filing of additional documents.
- (iv) The Id. Joint Registrar granted further two weeks' time to the Plaintiff/Appellant to file the documents, if any. The Id. Joint Registrar also permitted the Defendant/Respondent to file its written statement, after advance service of the additional documents by the Plaintiff/Appellant.
- (v) Finally, on 6th October, 2022, the Id. Joint Registrar granted further two weeks' time to the Defendant/Respondent to file the written statement. The said two weeks is stated to have expired on 21st October, 2022.

Thus, it was finally on 6th October 2022 that a categorical statement was made by the Plaintiff that no documents are to be filed. The incomplete written statement was filed by the Defendant/Respondent on 29th October, 2022, without the affidavit of admission/denial. Thereafter, on 24th November, 2022, the written statement with the affidavit of admission/denial was served



on the Plaintiff/Appellant.

18. The aforesaid facts were also noted by the Id. Single Judge in the impugned judgment, and accordingly the Id. Single Judge disposed of the chamber appeals, while imposing Rs. 1 lakh as costs on the Defendant/Respondent, and took the Defendant/Respondent's written statement on record.

19. Under the DHC Original Side Rules some aspects are clear and categorical viz., —

- (i) The documents which a Plaintiff wishes to rely upon ought to be filed with the plaint.
- (ii) If any documents are not filed along with the plaint, an application for filing of additional documents is required to be filed under the Order VII Rule 14 of the Code of Civil Procedure 1908 and the same would be considered in terms of the DHC Original Side Rules.
- (iii) The written statement would have to be mandatorily filed within the time prescribed in Rule 4, Chapter VII of the DHC Original Side Rules, along with the affidavit of admission/denial, without which the written statement cannot be taken on record.

20. Considering the above position, there is usually no occasion for the Id. Joint Registrar at any point in time to enquire from either of the parties as to whether any documents were to be filed along with the pleadings. Parties have to be diligent, on their own, if they wish to file any documents along with their respective pleadings, and if they do not file the relevant documents at an appropriate stage as prescribed in the Rules, the respective party would have to take appropriate steps in accordance with law for bringing any additional documents on record. The grounds have to exist for filing of additional



documents which cannot be made routine. The very purpose of the change in DHC Original Side Rules would be defeated if a Plaintiff can indefinitely keep on filing documents. Documents relied upon by the Plaintiff have to be filed in the first instance and ought to be served upon the Defendant in terms of Order V Rule 1&2 of CPC.

21. Ideally speaking, in the present case, once the summons were served on the Defendant/Respondent on 26th November, 2021, the maximum time that was available for the Defendant/Respondent to file the written statement was 120 days from the date of summons *i.e.*, 26th March, 2022. However, this issue has been confounded owing to the repeated orders of the Id. Joint Registrar, granting repeated extensions to the Plaintiff to file additional documents and repeated time to the Defendant/Respondent for filing its written statement, despite the mandatory period having expired.

22. In addition to the above, confusion has also been created due to the hesitation on part of the Plaintiff/Appellant to categorically state before the Id. Joint Registrar that no further documents were to be filed along with the plaint, as is recorded in the order dated 15th September, 2022. It was this confusion that led to further time being extended for filing the written statement by the Defendant/Respondent. However, this confusion has been finally brought to a closure by the impugned order of the Id. Single Judge.

Conclusion

23. There was some uncertainty in relation to the interpretation of Rule 4, Chapter VII of the DHC Original Side Rules, as also the fact that it was finally in October 2022, that the issue relating to filing of documents by the Plaintiff, finally came to a close. Under such circumstances and peculiar facts, the Court has perused the impugned order of the Id. Single Judge, and does not wish to



interfere in the same as the Id. Single Judge has considered all the orders passed by the Id. Joint Registrar granting repeated extensions for filing written statement and has imposed heavy costs on the Defendant/Respondent for having filed the written statement beyond prescribed time.

24. In the facts of the present case, considering the nature of the matter and the uncertainty in law that was prevailing at the relevant point in time, the costs imposed by the Id. Single Judge are increased to Rs. 1.5 lakhs. The impugned judgement is not interfered with except on the aspect of costs.

25. The costs shall be paid to the Id. Counsel for the Plaintiff's within two weeks.

26. Mr. Lohia, Id. Counsel for the Appellant, however, submits that even now the written statement is not on record as there were certain objections and there has been refiling of the same. This issue has not been considered by this Court and the same may be raised before the concerned Roster Bench in terms of the DHC Original Side Rules.

27. The appeal is disposed of in above terms.

28. All pending applications, in any, are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**AMIT SHARMA
JUDGE**

SEPTEMBER 17, 2024/sn/dj/ms
(corrected & released on 23rd September, 2024)