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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 27th September, 2024+ **FAO(OS) 65/2024 & CM APPL. 27327/2024**

SANEH KUMAR MITTAL (Deceased) AND ORS

.....Appellants

Through: Ms. Kirti Mewar, Advocate for A-2, 5
and 6 (M- 7204073750).

versus

SADHNA GUPTA

.....Respondent

Through: Mr. Keshav Tiwari, 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 Appellants under Section 10 of the Delhi High Court Act, 1966 challenging the common impugned judgment dated 29th February, 2024 by which the Chamber Appeals being ***O.A. No. 5/2024*** and ***O.A. No. 6/2024*** have been dismissed by the Id. Single Judge. The Chamber Appeal being ***O.A. No. 5/2024*** was filed by Defendants No. 2, 5 and 6 and Chamber Appeal being ***O.A. No. 6/2024*** was filed by Defendants No. 1, 3 and 4, in the suit. Both the said Chamber Appeals were filed challenging the order dated 13th December, 2023 passed by the Id. Joint Registrar, by which the written statement filed by the respective Defendants was taken off record for being filed beyond the stipulated period of 120 days.
3. At the outset Ms. Kirti Mewar, Id. Counsel appearing on behalf of the Appellants submits that, presently, she has received instructions from and



only represents Mr. Dinesh Kumar Mittal, Mr. Anit Mittal, and Ms. Aditi Mittal being Appellant No. 2, 5 and 6, respectively, in the instant Appeal. The said Appellants correspond to the Chamber Appeal being **O.A. No. 5/2024**.

4. Insofar as remaining Appellants are concerned *i.e.*, Mr. Saneh Kumar Mittal (Deceased) through Ms. Nisha Mittal, Mr. Anubhav Mittal, and Mr. Abhishek Mittal being Appellants No. 1, 3 and 4, respectively, in the instant Appeal, it is submitted by Ms. Mewar that she has not received any instructions from the said Appellants, which correspond to Chamber Appeal being **O.A. No. 6/2024**.

5. Accordingly, decision of the Id. Single Judge dismissing **O.A. No. 6/2024** has attained finality as against Appellant Nos.1, 3, and 4, due to non-prosecution of the present Appeal by the said Appellants. The Appeal *qua* the said Appellants is accordingly dismissed for non-prosecution.

6. Submissions on behalf of Appellants No. 2, 5 and 6 *qua* dismissal of **O.A. No. 5/2024** have been heard.

7. At the outset, it is noted that maintainability of the present appeal has not been challenged by the Respondent.

8. The relevant chronology of dates, as per the Appellants, regarding filing of the written statement is as under:-

Dates	Events
01.03.2018	Delhi High Court (Original Side) Rules, 2018 came into force.
30.07.2018	Summons are issued to all Defendants in CS(OS) 369/2018 , returnable on 24 th September, 2018.



19.08.2018	It is alleged that summons was served on Appellant No. 2, however, Appellant Nos. 5 and 6 were never served in the matter.
01.11.2018	Format for filing of affidavit of admission and denial came into effect by way of amendment dated 16 th October, 2018 to the Delhi High Court (Original Side) Rules, 2018.
04.12.2018	Appellant Nos. 2, 5 and 6 are stated to have filed their joint written statement, however, the same was under objections.
07.12.2018	Appellant Nos. 2, 5 and 6 directed by Id. Joint Registrar to clear objections and bring the joint written statement on record.
17.12.2018	Time period of 120 days prescribed under Rule 4 Chapter VII of Delhi High Court (Original Side) Rules, 2018 for filing written statement <i>qua</i> Appellant Nos. 2, 5 and 6 is stated to have expired.
16.02.2019	Application for condonation of delay in filing of the joint written statement is stated to have been filed on behalf of Appellant Nos. 2, 5 and 6.
26.02.2019	Appellant Nos. 2, 5 and 6 re-filed their written statement along with an affidavit of admission/denial.

9. It is submitted on behalf of the Appellants No. 2, 5 and 6 that the summons were issued on 30th July, 2018, and the same was served to Appellant No. 2 on 19th August, 2018. However, it is alleged that the Appellants No. 5 and 6 were never served in the matter.

10. On 24th September, 2018 the Id. Counsel for Appellants No. 2, 5 and 6



appeared before the Id. Joint Registrar and sought time to file their respective written statements, along with an application for condonation of delay in filing the same.

11. It is stated that the joint written statement on behalf of Appellant Nos. 2, 5 and 6 was filed on 4th December, 2018, however, the same was not accompanied with the affidavit of admission/denial of documents. On 7th December, 2018 Id. Counsel for the Appellants 2, 5 and 6 informed the Id. Joint Registrar that although the written statement has been filed on behalf of the concerned Appellants, the same is lying under objections by the Registry. Accordingly, the Id. Joint Registrar directed the Appellant Nos. 2, 5 and 6 to remove the objections and place the written statement on record. The relevant portion of the said order is as under:

*“It is submitted by learned counsel for defendant nos. 2, 5 & 6 that he has received incomplete set of documents and he had to carry out the inspection. **It is further submitted by him that he has filed written statement. As per office note, the same is lying under objection.** He is directed to remove the same and get the same placed on record and he is also directed to supply the copy of the same to learned counsel for plaintiff. Replication, if any, be filed within four weeks thereafter. **Parties are also directed to file affidavits of admission/denial of documents with copies thereof be exchanged.**”*

12. On 13th February, 2019 the Id. Joint Registrar, at request of the Id. Counsel for Appellant Nos. 2, 5 and 6, granted last opportunity for clearing the objections against the joint written statement, and for filing an appropriate application for condonation of delay in filing the same. The relevant portion of the said order is reproduced herein under:



“ It is submitted by counsel for the defendant no.2, 5 & 6 that the defendant no.2, 5 & 6 have filed the written statement and the same is still lying under objection. Counsel for the defendant no.2, 5 & 6 seeks time for taking appropriate steps and also for filing an appropriate application for condonation of delay in filing the written statement. Last opportunity is granted for the same.

It is submitted by defendant no.3 that the defendant no. 1, 3 & 4 have filed the written statement along with an application for condonation of delay in filing the written statement today vide diary no. 125899 and 125868.

It is submitted by counsel for the plaintiff that he has not received the copy of the written statement filed on behalf of the defendants. Copy supplied by counsel for the defendant no.2, 5 & 6 today.

It is submitted by defendant no.3 that he will supply the copy of the written statement and application within two days.”

13. It is stated that on 16th February, 2019 an application for condonation of delay in filing the joint written statement was filed on behalf of Appellants No. 2, 5 and 6, and thereafter the said joint written statement along with the affidavit of admission/denial was finally re-filed on 26th February, 2019.

14. Ms. Mewar, Id. Counsel for the Appellant No. 2, 5 and 6, further submits that initially the written statement was filed on 4th December, 2018, which was within the period of 120 days stipulated under Rule 4, Chapter VII of the Delhi High Court (Original Side) Rules, 2018 (*hereinafter ‘DHC Original Side Rules’*), however, the same was not accompanied with the affidavit of admission/denial of documents.



15. It is her case that on 1st November, 2018 the format for filing of affidavit of admission/denial of documents was notified by this Court vide amendment to the DHC Original Side Rules. It is accordingly argued by the Id. Counsel that the mandate of filing of written statement along with the affidavit of admission/denial in prescribed format within a period of 120 days, in terms of the DHC Original Side Rules, would therefore have to be construed from 1st November, 2018. Considering that in the present case the limitation for filing written statement fell within the period when the format for affidavit of admission and denial of documents under the DHC Original Side Rules was being framed and notified, it is submitted by the Id. Counsel for Appellant No. 2, 5 and 6 that the aforesaid mandate of 120 days cannot start from the date of service of summons to the concerned Appellants.

16. Ms. Mewar also relies upon the decision in ***Cosco (India) Limited v. Paramsukh Nirman Pvt. Ltd., (2019:DHC:3745)*** to argue that if the written statement is filed within limitation, and there is a delay in filing of the affidavit of admission/denial of documents, the same can be condoned by the Court as the non-filing of affidavit of admission/denial of documents is merely a curable defect in the filing of written statement.

17. On the other hand Mr. Keshav Tiwari, Id. Counsel appearing on behalf of the Respondent, who is the Plaintiff in the concerned suit, has urged that in the present case the joint written statement is not liable to be taken on record.

18. Id. Counsel submits that there are various defects in filing of the concerned written statement. It is submitted that at the initial filing of the written statement on 4th December, 2018, no application for condonation of delay was filed by the Appellant No. 2, 5 and 6, and thus the said written statement could not have been considered as a properly filed. It is argued that



at best the proper filing of the written statement would have to be considered as 26th February, 2019 *i.e.*, the date of re-filing the written statement, which is beyond the 120 days stipulated period under the Rule 4 of Chapter VII of DHC Original Side Rules.

19. It is also submitted by the Id. Counsel for the Respondent that the Ld. Single Judge has considered 16th February, 2019 when the application for condonation of delay was filed as the date of filing of the written statement. He thus submits that the filing on 4th December, 2018 cannot be considered as proper filing at all. He further submits that the new filing of the joint written statement on 26th February, 2019 was with a new diary no., and therefore the same has to be construed as a fresh filing.

20. Heard. It is noted that the DHC Original Side Rules were notified on 27th February 2018 to come into effect from 1st March 2018. The relevant Rule 3 and 4, Chapter VII, which were notified then were as under:

“3. Affidavit of admission/ denial of documents alongwith written statement.- Alongwith the written statement, defendant shall also file an affidavit of admission/ denial of documents filed by the plaintiff, without which the written statement shall not be taken on record. Alongwith the written statement, the defendant shall be entitled to file applications for interrogatories for examination of the plaintiff together with proposed interrogatories; application for discovery; and application for inspection of such documents.

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.”

21. Subsequently, the format for the affidavit of admission/denial was notified on 16th October, 2018 *w.e.f.* 1st November, 2018. A perusal of both these Rules pre- and post-amendment would reveal that the obligation to file the said affidavit of admission/denial always existed. It was only the format of the said affidavit which was notified *w.e.f.* 1st November 2018. Thus, the notification of the format would not extend the period of limitation for the concerned Appellants to file their written statements and would not assist the case of the Appellants.

22. However, it still needs to be borne in mind that the initial filing of the written statement without the affidavit of admission/denial was within the 120 days. In *Cosco (supra)* which is a Single Judge decision, the Court has already considered the question of whether the mandatory period applicable to written statement would also apply to an affidavit of admission/denial. In the said decision, the Court has observed that the non-filing of an affidavit of admission/denial would only be a defect which has to be usually cured within 30 days. The relevant observations in the said case are reproduced hereunder:

“9. A perusal of the judgments cited by both the counsels for the parties, shows that:

a) The filing of the written statement has to be within 120 days. The period of 120 days is mandatory;



b) The written statement has to be accompanied with the affidavit of admission/denial.

10. However, under Chapter VII, Rule 3 of the Delhi High Court (Original Side) Rules, once a written statement is filed, the same would not be brought on record without the affidavit of admission/denial. It would be one of the defects in the written statement if it is not accompanied with the affidavit of admission/denial. For re-filing and removing defects, there is a total 30 days' period which is available to parties. Chapter I Rule 14 cannot be used to dispense with the mandatory requirements under the Rules, but only in respect of those rules where it is only a question of practice and procedure. The time of seven days from re-filing within the total period of 30 days would have to be considered as a matter of practice and procedure in the present case inasmuch as there is a fundamental difference between the 'filing of the written statement' along with the affidavit of admission/denial and 'bringing the same on record'. If the affidavit of admission/denial is not accompanying the written statement, however, upon the Registry pointing out the said defect, the same can be cured within 30 days. If the said defect is cured, it cannot be held that the written statement and the affidavit of admission/denial cannot be brought on record.

11. While the timelines for filing the written statement within 120 days, are absolutely mandatory, **removal of defects has to be seen in the overall period of 30 days which is permitted under Rule 3 of Chapter IV.** In the present case, the first filing was on 15th January, 2019, the second filing was on 25th January, 2019 and the final filing was on 15th February, 2019. The time of 120 days expired only on 22nd January 2019, thus the written statement was filed within the 120 days period. The defects, which were pointed out by the Registry i.e. not filing of admission/denial affidavit was cured within the



broad frame work of Chapter IV, Rule 3 i.e. within 30 days of the initial filing of the written statement.”

23. Here, in the present case there has been a delay by the Appellants who filed the affidavit of admission/denial only on 26th February 2019. The objection by the Respondent is that there is a fresh diary number in respect of the re-filing of the joint written statement. This in the opinion of this Court is a procedural issue. Furthermore, it is also settled that condonation of delay in re-filing is more a discretionary power exercised by the Court. The mere ascribing of a new diary number does not render the original filing completely *non-est*. The Court has to consider whether the re-filing delay is to be condoned or not. In *D.D.A. vs. Durga Construction Co. (2013 SCC Online Del 4451)*, the Id. Division Bench clearly holds as under:

“17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered *non est* and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in *Ashok Kumar Parmar v. D.C. Sankhla, 1995 RLR 85*, whereby a Single Judge of this Court held as under:—

“Looking to the language of the Rules framed by



Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.”

*A Division Bench of this Court, upheld the aforesaid view in **D.C. Sankhla v. Ashok Kumar Parmar, 1995 (1) AD (Delhi) 753** and while dismissing the appeal preferred against decision of the Single Judge observed as under:—*

“5 In fact, that is so elementary to admit of any doubt.

Rules 1 and 2 of (O.S.) Rules, 1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removed of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act.”

18. *In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3)*



of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. **The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.**

19. The Supreme Court in the case of **Union of India v. Popular Construction Company, (2001) 8 SCC 470** has held that the time limit prescribed under section 34 of the Act to challenge an award is not extendable by the Court under section 5 of the Limitation Act, 1963 in view of the express language of section 34(3) of the Act. **However, this decision would not be applicable in cases where the application under section 34 of the Act has been filed within the extended time prescribed, and there is a delay in re-presentation of the application after curing the defects that may have been pointed out. This is so because section 5 of the Limitation Act, 1963 would not be applicable in such cases.** Section 5 of the Limitation Act, 1963 provides for extension of the period of limitation in certain cases where the Court is satisfied that the appellant/applicant had sufficient cause for not preferring an appeal or making an application within the specified period. In cases, where the application/appeal is filed in time, section 5 would have no application. The Supreme Court in the case of **Indian Statistical Institute v. Associated Builders, (1978) 1 SCC 483** considered the applicability of section 5 of the Limitation Act, 1963 where the objection to an award under the provisions of the Arbitration Act, 1940 was filed in time



but there was substantial delay in re-filing the same. The High Court in that case held that there was a delay in filing the objections for setting aside the award and consequently, rejected the application for condonation of delay. An appeal against the decision of the High Court was allowed and the Supreme Court rejected the contention that there was any delay in filing objections for setting aside the award. [...]

20. It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.”

24. The above judgement has been followed by a Id. Single Judge in *Technology Development Board Vs Selco International And Others* (2024 SCC OnLine Del 4753), wherein the Court observes:

“15. In the very next paragraph of the said decision, however, the learned Single Judge has noted the precedent of the Division Bench in *D.D.A. v. Durga Construction Co.*, in which the Division Bench of this Court has clearly held that the Court has to be more liberal while dealing with applications seeking condonation of delay in refiling, as compared to applications seeking condonation of delay in filing. Of course, if condonation of delay in refiling is inordinate, the Court would put the applicant strictly to explain the said delay. Otherwise, the Court has, while dealing with an application for condonation of delay in refiling, to bear in mind the hallowed principle that Courts are intended to adjudicate



on disputes, so as to enable their reaching a quietus, and not to avoid adjudicating disputes on technical grounds, thereby leaving the wound to fester untreated.”

Thus, if there is a specific proscription or bar on condonation of delay beyond a particular period, say for eg., in a special statute, even re-filing delay has to be viewed strictly.

25. There can be no doubt that the written statement always ought to be accompanied with the affidavit of admission/denial as per prescribed format and filed within the prescribed timelines. This is one of those cases in which pleadings were being completed while the 2018 Rules were just introduced and certain amendments were being carried out. In these facts, therefore, condonation of delay in re-filing of written statement along with the affidavit of admission/denial is being considered.

26. Coming to the facts of the present case, the fact that the written statement in the present case was initially filed by the concerned Appellants on 4th December, 2018, within the limitation period of 120 days, is not disputed. It was later filed with an application for condonation of delay and the affidavit of admission/denial. The delay in filing the affidavit of admission/denial being one in re-filing, the same is condoned.

27. Considering the above position, this Court directs that the written statement filed by the Appellant Nos. 2, 5 and 6 along with affidavit of admission and denial be taken on record, subject to payment of cost of Rs. 50,000/- to the Respondent.

28. The aforesaid costs shall be paid to the Id. Counsel for the Respondent within two weeks.

29. The impugned order is partially set aside to the extent it dismissed **O.A.**



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5/2024 preferred by Appellant Nos. 2, 5 and 6.

30. The instant Appeal is allowed and disposed of in the above terms. The present order is in its own peculiar facts.

31. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

SEPTEMBER 27, 2024/sn/ms
Corrected and uploaded on 7th October 2024