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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision:-27th September, 2024.***

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FAO(OS) 102/2023 & CM APPL. 49218/2023**DELHI GYMKHANA CLUB LIMITED****.....Appellant****Through: Mr Prateek Kumar, Ms Raveena Rai,
Ms Moha Paranjpe, Advocates (M-91
8369757825)****versus****COL ASHISH KHANNA SM RETD & ORS.Respondents****Through: Mr. C. Arayama Sundaram, Sr. Adv.
with Mr. Sanyam Khetrapal, Mr.
Nitesh Goyal, Mr. Zaffar, Ms. Prakriti
Anand, Ms. Lisa Sankrit & Ms. Arya
Suresh, Advs. for R-1.****CORAM:****JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. Ld. Counsels for the parties submit that have no objection to this Bench hearing this matter. Further, no issue of maintainability of the instant appeal has been raised by the Respondents.
3. This is an appeal filed by the Appellant- Delhi Gymkhana Club Limited under Order XLIII Rule 1 of Code of Civil Procedure, 1908 read with Section 10 of Delhi High Court Act, 1966 challenging the impugned order dated 21st August, 2023 (as corrected and modified *vide* order dated 5th September, 2023) passed by the Id. Single Judge dismissing the Chamber Appeal being



O.A. No. 37/2022. The said Chamber Appeal was filed assailing order dated 1st September, 2022 passed by the Id. Joint Registrar in **CS(OS) No. 171/2022**, whereby the right of the Appellant/Defendant No. 1 to file the written statement in the suit has been closed.

4. The present appeal arises out of a suit being **CS(OS) 171/2022** filed by the Respondent/Plaintiff- Col. Ashish Khanna, SM (retd.), who is stated to be the former Secretary of the Delhi Gymkhana Club Limited. In the said suit, the club was Defendant No.1 and the erstwhile management was arrayed as Defendant Nos. 2 to 6.

5. Summons were issued in the said suit *vide* order dated 25th March, 2022. On the said date, the Appellant Club was duly represented by a Counsel appearing on advance service, and he accepted summons on behalf of the Appellant Club. The relevant paragraphs of the said order are set out below:

“8. Issue summons to the defendants, returnable 31st May 2022.

9. Mr. Namit Saxena, Advocate for defendant No. 1/Delhi Gymkhana Club Pvt. Ltd., appears on advance copy; accepts summons; and seeks leave to file written statement.

10. Upon the plaintiff taking steps within 10 days, let summons be issued to defendants Nos. 2 to 6 by all permissible modes. Let the summons indicate that the defendants are required to file written statement/s within 30 days from the receipt of summons, alongwith affidavit/s of admission/denial of documents filed by the plaintiff; the plaintiff may file replication to the written statement within 30 days thereafter, alongwith affidavit of admission/denial of the documents filed by defendants, with copy to the opposing counsel.



11. List before the learned Joint Registrar for completion of pleadings, for admission/denial of documents and marking of exhibits on 04th May 2022.

12. List before court on 31st May 2022.”

6. On 04th May, 2022 the matter was listed before the Id. Joint Registrar for completion of pleadings, however, none appeared on behalf of the Appellant Club. The remaining Defendant Nos. 2 to 6 were duly represented on the said date, and sought time for filing their respective written statements. The relevant portion of the said order of Id. Joint Registrar is reproduced under:

“Defendant nos.2 to 5 stands served by way of e-mail.

Service report qua defendant no.6 is awaited.

Counsels have appeared on behalf of defendant nos.2 to 6 and sought time to file written statement along with reply to interim application under Order XXXIX Rule 1 and 2 CPC. *Let the same be filed within stipulated time period in accordance with law. Thereafter, plaintiff is at liberty to file replication/rejoinder without prejudice to his right to contest delay in filing written statement, if any.”*

7. The Appellant Club, however, did not file its written statement by the next date of hearing before the Id. Single Judge i.e., 31st May, 2022. On the said date a new Counsel appeared for the Appellant Club and the Court noticed that pleadings in the suit were yet to be completed. Further, in the meantime, the Court directed the new ‘General Committee’ of the Appellant Club, as constituted by the National Company Law Tribunal, New Delhi vide order dated 1st April, 2022 in ***Company Petition 71/241-241/PB/2020*** titled



Union of India v. Delhi Gymkhana Club Limited & Ors., to consider the representation of the Respondent/Plaintiff in respect of the grievances raised in the concerned suit. It was also directed that the said representation shall be decided within two months from the date of submission of the same by the Respondent/Plaintiff. The said order of the Id. Single Judge dated 31st May, 2022 is relevant and is set out below:

“CS(OS) 171/2022 and I.A. 4679/2022 (Order 39 Rules 1 & 2 CPC)

Mr. Snehal Kakrania, learned counsel appears for defendant No.1/Delhi Gymkhana Club Ltd ('Club') and submits that in compliance of last order dated 01.04.2022 made by the National Company Law Tribunal, Principal Bench, New Delhi, the Central Government has nominated 15 persons as Directors of the General Committee to manage the affairs of the Club in accordance with its Memorandum and Articles of Association. Counsel submits that all 15 members of such General Committee are however yet to take charge.

2. Pleadings in the suit and in the interim application are yet to be completed.

3. Accordingly, list before the learned Joint Registrar on 12th July 2022, the date already fixed for the aforesaid purpose.

4. In the meantime, as requested by the plaintiff, upon the plaintiff making a fresh representation relating to the grievances raised in the present suit, before the new General Committee of the Club, the new General Committee shall consider and decide the representation within 02 months from the date of submission. *The decision of the General Committee shall be communicated in writing to the plaintiff; who shall place the same before this court, before the next date of hearing.*



5. *List before court on 7th September 2022.*”

8. On 12th July, 2022, the Id. Joint Registrar recorded that there was no written statement filed by the Defendant No.1/Appellant Club. The said order reads as under:

“[...]

CS(OS) 171/2022

Written statement e-filed on behalf of D-2 returned under objections. However, documents and V/Nama on behalf of D-2 are on record. Counsel for defendant no. 2 to remove the objections and get the same placed on record in accordance with law. Replication to w.s and A/D affidavit of documents qua D-2 e-filed on behalf of Plaintiff. Written Statement and affidavit of admission/denial of documents e-filed on behalf of D-3 and D-4. Replication be filed in accordance with law.

No written statement filed by D-1, D-5 and D-6.

Put up for completion of pleadings on 01.09.2022”

9. It is stated that the written statement on behalf of Appellant Club finally came to be filed on 24th August, 2022 along with the affidavit of admission and denial. It is also stated that the said written statement was accompanied with an application for condonation of delay of 120 days in filing of the written statement. However, again on 1st September, 2022, it was recorded by the Id. Joint Registrar that the written statement on behalf of Appellant Club was not on record and appeared to be under scrutiny, although the list of documents filed was on record. *Vide* the said order, considering the application filed on behalf of Respondent/Plaintiff under Order VIII Rule 1 and 10 of CPC, the Id. Joint Registrar closed the right of the Appellant Club



to file written statement and bring the same on record. The relevant portion of the order dated 1st September, 2022 is set out below:

***“[...]
IA No.14014/2022(U/O VIII Rule 1 and 10 CPC
filed by plaintiff to strike off the defence of the D-
1)
Written statement of D-1 is not on record.
However, list of document filed by D-1.”***

Learned counsel for plaintiff submits that he has not received the written statement from D1 so far. He further submits that D1 had appeared on advance notice on 25.03.2022 and sought time to file the written statement. Learned counsel for plaintiff further submits that statutory period to file the written statement is already over.

*On the other hand, learned counsel for D1 submits that this is not a Commercial Suit and therefore, period of 120 days is not mandatory and only directory. **Learned counsel for D1 further submits that she has already filed the written statement alongwith condonation application in the registry vide diary No. 1424131/2022 dated 24.08.2022 and therefore, she be given an opportunity to place the same on record.***

I have heard the submissions of learned counsel for parties and have perused the record carefully.

*The period of 30 days from the date of service of defendant No.1 and 90 days thereafter, as a discretionary period to file the written statement is already over. **Learned counsel for D1 has stated that she has filed the written statement alongwith condonation application on 24.08.2022 which in itself has been filed after lapse of 120 days. The said written statement has not come on record till***



date and appears to be under scrutiny. Defendant No.1 cannot be granted indefinite time to clear the objections.

As far as the contentions of learned counsel for D1 with respect to the suit being not a Commercial one is concerned, the attention of learned counsel for D1 is drawn towards Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 which are applicable to the Original Civil Jurisdiction. The said rule is reproduced hereinunder for the purpose of convenience:-

"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."

This Rule clearly provides the total period of 120 days for filing the written statement. It would not be out of place to mention here that the statutory period for filing the same is only 30 days and after that the defendant has to show that he/she was prevented by sufficient cause for exceptional and



unavoidable reasons and only on being convinced, the time can be extended to further 90 days.

It is pertinent to mention here that no application for enlargement of time or condonation of delay citing the reasons for not filing the written statement on time is listed before me. So at this stage, no grounds for giving further opportunity to the defendant No.1 to place the written statement on record are made out.

I do not find any merits in the submissions made by learned counsel for D-1. Hence, right to file the written statement on behalf of D-1 stands closed. As a consequence thereof, the instant application filed by plaintiff stands disposed off accordingly.

10. The aforesaid order of the Id. Joint Registrar was challenged by the Appellant Club through the Chamber Appeal being *O.A. No. 37/2022*. In the said Chamber Appeal, notice was issued on 16th September, 2022, and the same was finally dismissed by the Id. Single Judge *vide* impugned order dated 21st August, 2023. The rationale of the Id. Single Judge for dismissing the said Chamber Appeal is that the filing of written statement in the instant case would be governed by the Rule 4, Chapter VII of Delhi High Court (Original Side) Rules, 2018 (hereinafter ‘DHC Original Side Rules’). The Id. Single Judge passed a detailed judgment, whereby it is held that the written statement having been filed by the Appellant Club beyond the stipulated period of 120 days in a non-commercial suit as per the aforesaid Rule, the Id. Joint Registrar’s order closing the right of the Appellant Club to file written submissions is in accordance with law as also the various judgments of the Division Benches of this Court. The observations of the Id. Single Judge are set out below:



12. Admittedly, the present case is a non-commercial suit. Rule 1 Order VIII CPC deals with the time period for filing of written statement. It prescribes that defendant shall file written statement within 30 days from the date of service of summons on him. Proviso to the said Rule prescribes that in case the defendant fails to file written statement within the stipulated period of 30 days, the Court is empowered to allow the same to be filed upto a maximum further period of 90 days, subject to reasons being recorded in writing. The second proviso relates to a commercial suit only. Chapter VII of the DHC Rules, which came into force on 01.03.2018, deals with the procedure for appearance by defendant, written statement, set off, counterclaim and replication. Rule 4 specially vests power with the Court to extend time for filing written statement. It provides that, in case written statement is not filed within 30 days, subject to defendant satisfying the Court that there was sufficient cause i.e., that he was prevented from filing the same due to some exceptional or unavoidable reason, the Court may extend the time by a further period not exceeding 90 days, but not thereafter. The Rule additionally provides that the defendant be burdened with appropriate cost, and only upon the payment of such cost, would the written statement be taken on record. Another departure from Rule 1 Order VIII is the use of expression 'but not thereafter', to which I would advert later.

13. The controversy raised as to whether filing of the written statement and condonation of delay in filing the same, would be governed by Order VIII Rule 1 CPC or Rule 4 of the DHC Rules has surfaced in many cases.

14. In *Kailash* (Supra), Supreme Court, while considering the object and purpose behind enacting Rule 1 of Order VIII, opined that the provision is to be construed as directory and not mandatory, and at the



same time it was cautioned that only in exceptional cases, the Court may extend the time for filing written statement, though the period of 30 days and 90 days had expired. Again in *R.N. Jadi & Brothers & Ors v. Subhashchandra11*, Supreme Court, while referring to its earlier decision in *Kailash (Supra)*, held that extension of time beyond 90 days was not automatic and satisfaction of the Court has to be recorded, as to the existence of sufficient justification, for departing from the time limit fixed by the Court. The Court again cautioned that the decision in *Kailash (Supra)* should not be considered as an authority for receiving written statement after the expiry of period permitted by the law, in a routine manner. The decision in *Kailash (Supra)* was again referred to by the Supreme Court in *Bharat Kalra (Supra)*, while condoning a delay of 193 days in filing of the written statement.

15. Recently, in *Desh Raj (Supra)*, a decision rendered by a three Judge Bench, the provision again came up for consideration before the Supreme Court. The defendant had failed to file the written statement within the period of 120 days of notice, resulting in closure of opportunity to file the same and his defence being struck off. While considering the effect of Commercial Courts Act, 2015, it was held that after the coming into force of the said Act, two regimes of civil procedure came into existence. While commercial disputes, as defined under Section 2(c) of the Commercial Courts Act, were governed by Section 16 of the said Act, all other noncommercial disputes fell within the ambit of the unamended (or original) provisions of CPC. It was held that the unamended Order VIII Rule 1 CPC would continue to be directory, and thus would not come in the way of inherent jurisdiction of the Court, to condone certain delays. Notably, in this case, the effect of Rule 4 and 5 of the DHC Rules was not the matter for court's consideration.

16. The interpretation of Order VIII Rule 1 CPC vis-à-



vis Rule 4 and 5 of the DHC Rules first came up before this Court in Gautam Gambhir & Ors. v. Jai Ambey Traders & Ors.¹² and Ram Swarup Lugani (Supra), wherein the Court dealt with a Chamber Appeal against an order of Joint Registrar rejecting the application for condonation of delay. The Court taking note of the fact that the DHC Rules came into effect in 2018 i.e., after the Commercial Courts Act was notified, opined that use of expression ‘but not thereafter’ in Rule 4 would mean that a total 120 days (30 + 90) was granted for filing written statement. Further, both Rules 4 and 5 were held to be mandatory.

[...]

18. Rule 4 of the DHC Rules came up for interpretation in a noncommercial suit before a Single Judge of this Court in Amrendra Dhari (Supra). The court drew a distinction between the discretionary powers of condonation of delay envisaged under Rule 4 and Rule 5 for filing of the written statement and replication, respectively. Court was of the considered view that the construct of the two Rules has different outcomes, even though textually they are perceived to be the same merely because of the use of the expression “not thereafter” in the two Rules. The court held that (not necessarily in the same words) while Rule 5 circumscribes the courts discretion to 45 days -and not a day beyond- in permitting the filing of replication, no such hard stop date is envisaged to apply to Rule 4, as far as written statements filed beyond 120 days are concerned. The court found a nuanced distinction in the two Rules, because of the use of words “may” in Rule 4 and “shall” in Rule 5, the Court was of the view that “may” signifies existence of discretion unlike “shall” used in Rule 5. The court was also persuaded by the dictum of law that a party should not be condemned unheard. Closing the right to file written statement was considered to be a serious consequence that could not



be undermined due to a procedural breach.

19. The ruling in Amrendra Dhari (Supra) was scrutinised in Charu Agrawal v. Alok Kalia & Ors.¹⁵, wherein another Division Bench of this Court examined the width of Rule 4. While traversing the entire case law on the subject and agreeing with the conclusion in earlier decisions of the Division Bench including that in Ram Swarup Lugani (Supra) and Harjyot Singh (Supra), it was held as under :-

“35. It must with due respect be observed that neither Order VIII as originally standing in the Code nor its provisions as adopted by the 2015 Act employ the phrase “but not thereafter”. The said expression stands enshrined in both Rules 4 and 5 of 2018 Rules. It was the adoption of the aforesaid phrase which was understood by the Division Bench in Ram Sarup Lugani to be of critical and vital significance. The Court is further constrained to observe that once the Division Bench had on an extensive review of Rule 5 come to conclude that the usage of the expression was indicative of a terminal point having been constructed, it would have been impermissible to take a contrary view. Ram Sarup Lugani had tested the provisions of Rule 5 based on a textual interpretation, the adoption of a special period of limitation, the recognition of the Order VIII principles not being applicable and even the inherent power not being liable to be invoked in light of the emphatic language of the provision itself. Ram Sarup Lugani had also noticed the earlier Division Bench judgments in DDA vs K.R. Builders Pvt Ltd. , HTIL Corporation B.V vs Ajay Kohli as well as in Print Pak Machinery Ltd. v. Jay Kay Papers Converters



. all of which
had consistently upheld and recognised the
primacy of the
Rules over the provisions of the Code. The
Court in *Ram Sarup Lugani* had also duly
noticed the judgment of the Supreme Court in
Desh Raj. The former decision thus
constituted a binding precedent on the scope
of the Rules, the mandatory nature of the
timelines prescribed thereunder and that
neither Order VIII nor the inherent powers of
the Court being liable to be invoked to extend
the period of limitation as stipulated in Rule
5.

36. While the aforesaid discussion would
have been sufficient to lay the controversy at
rest, since *Amarendra Dhari Singh* also
proceeds on a perceived distinction between
Rules 4 and 5, the Court deems it apposite to
observe as follows. As was noticed in the
preceding parts of this decision, both Rules
employ the phrase “but not thereafter”. Both
the phrases “not exceeding” and “but not
thereafter” must clearly be accorded due
weight and consideration. This was an aspect
which was duly noticed in *Ram Sarup Lugani*.

37. Regard must also be had to the fact that
while the penultimate part of Rule 4 is not
replicated in Rule 5, that too would be of little
significance when one holistically reads Rule
4. It becomes pertinent to note that the
obligation to file a written statement in 30
days is originally placed by Rule 2 falling in
Chapter VII. Rule 4 deals with the extension
of time for filing a written statement. As is
manifest from a plain reading of that
provision, it confers a power on the Court to
condone the delay that may have been caused



and a written statement having not being filed within 30 days if it be satisfied that the Defendant was prevented by sufficient cause and for exceptional and unavoidable reasons to file the same within the prescribed period. Rule 4 then and upon such satisfaction being arrived at empowers the Court to extend the time for filing a written statement by a further period not exceeding 90 days but not thereafter.

38. The penultimate part of Rule 4 talks of the power of the Registrar to close the right of a Defendant to file a written statement if it be found that the same has not been tendered within the extended time. The use of the phrase “extended time” cannot possibly run beyond the maximum period of 120 days. In any case, the said provision as made in Rule 4 cannot possibly be countenanced or interpreted to recognise the Registrar being empowered to additionally extend time beyond the period of 120 days. The reliance which has been placed on various decisions noticed above and delivered in the context of Order VIII as found in the Code would have to be duly understood bearing in mind what had been held by the earlier Division Benches of our Court in K.R. Builders Pvt Ltd, HTIL Corporation as well as in Print Pak. The said judgments had consistently held that the Rules as adopted by the Court would clearly prevail over and above those which may find place in the Code. All the four decisions noticed above, had been rendered prior in point of time to Esha Gupta and had neither been noticed nor considered in the said judgment. Ram Sarup Lugani while relying on the aforementioned decisions, had drawn



sustenance from those decisions in support of its ultimate conclusion that Order VIII and the principles underlying the same would not apply to Rule 5.

39. The Court also deems it necessary to observe that the Rules directly fell for consideration of the Division Bench in Ram Sarup Lugani as well as the learned Judges who authored Gautam Gambhir and Harjyot Singh. The facial distinction between Rules 4 and 5 which appears to have weighed with the Court in Amarendra Dhari Singh would, in any case, not justify taking a contrary view. The Court notes that both Gautam Gambhir and Harjyot Singh were decisions rendered directly in the context of Rules 4 and 5 as enshrined in Chapter VII. This Court thus finds itself unable to accord an interpretation upon Rule 4 or 5 which would run contrary to what had been held in the earlier decisions and which necessarily bind this Court.

40. In conclusion, this Court is of the considered opinion that Gautam Gambhir, Ram Sarup Lugani and Harjyot Singh are binding precedents on the scope of Rules 4 and 5 as falling in Chapter VII of the Rules. The mere fact that the argument of a perceived discretion vesting in the Registrar in Rule 4 was not specifically raised or addressed would not justify the judgment of the Division Bench being either ignored or doubted. The Court has already noticed the issues that arise out of the judgment of the Division Bench in Esha Gupta. The earlier decisions of the Division Benches of the Court in K.R. Builders, HTIL Corporation, and Print Pak do not appear to have been cited for the consideration of the Bench. Ram Sarup



Lugani was a judgment which came to be rendered upon an exhaustive analysis of the earlier precedents rendered in the context of the Rules and the Code, the peremptory language in which Rule 5 stood couched, of how the creation of a special rule relating to limitation would exclude the permissibility of condonation or extensions being granted. While the order of the Division Bench in Tushar Bansal was based on a concession that was made, the judgment in Jamaluddin came to be pronounced with neither side having drawn the attention of the Court to the decision in Ram Sarup Lugani. The said decision proceeded on the principles which underlie Order VIII of the Code and the judgments of the Supreme Court in Kailash and Bharat Kalra rendered in the context of that provision. The Court notes that the adoption of Order VIII principles already stood negated by the earlier Division Benches in K.R. Builders, HTIL Corporation, Ajay Kohli and Print Pak. Those decisions too do not appear to have been cited for the consideration of the Court in Jamaluddin.”

20. In Charu (Supra), the Division Bench has very emphatically held the inviolability of the hard stop period of 120 days prescribed in Rule 4 for filing the written statement. Court re-stated the principles laid down in Gautam Gambhir (Supra) and Harjyot Singh (Supra), and declared that they act as binding precedents on the issue.

As of now, Charu (Supra) has laid to rest the debate on the ability of courts to condone delay in filing of written statement beyond 120 days in a noncommercial suit. Rule 4 circumscribes the power of court to condone the delay beyond the maximum permissible



time of 120 days.

21. Resultantly, this Court has no hesitation in holding that that the decision of Registrar is in conformity with the law as it stands and the exhaustive decisions of Division Benches of this Court.

22. The chamber appeal merits dismissal and is accordingly rejected.”

11. In this appeal the aforesaid order passed the Id. Single Judge has been challenged.

12. The present appeal was initially heard along with a writ petition viz., ***Manhar Sahbarwal v. High Court of Delhi & Ors. (2024:DHC:6406)*** wherein the constitutional validity of Rule 4, Chapter VII of DHC Original Side Rules was challenged. 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.



13. The validity of the said rule has been upheld by the Co-ordinate Bench of this Court *vide* judgment dated 23rd August, 2024 in ***Manhar Sahbarwal (supra)***. The operative portion of the said judgment is 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.”

14. Coming to the facts of this particular case, Rule 4, Chapter VII of the DHC Original Side Rules would be clearly applicable for deciding the instant Appeal.

15. Mr. Prateek Kumar, Id. Counsel appearing on behalf of the Appellant Club submits that the said Club was placed in an extraordinary situation, whereby after summons were issued by the Court on 25th March, 2022 in the concerned suit. The NCLT, Delhi took note of various irregularities in the functioning of the said Club in ***Company Petition 71/241-241/PB/2020*** titled



Union of India v. Delhi Gymkhana Club Limited & Ors. Thereafter, *vide* order dated 1st April, 2022, the NCLT, Delhi permitted the Central Government to nominate 15 persons as Directors on the General Committee of the Appellant Club to manage its daily affairs.

16. It is submitted that after the new Directors took charge of the Appellant Club, a new Counsel was engaged to appear before the Id. Single Judge in the concerned suit on the next date of hearing *i.e.*, 31st May, 2022. It is further submitted that for the first time the new management was represented before the Court in the concerned suit only on 31st May, 2022.

17. Considering the above, it is argued by the Id. Counsel for the Appellant Club that the time between the date of issuance of summons *i.e.*, 25th March, 2022, and the date of first appearance on behalf of the new management in the concerned suit *i.e.*, 31st May, 2022, deserves to be excluded for the purpose of calculating the 120 days limitation period stipulated under Rule 4 of Chapter VII of DHC Original Side Rules. However, it is not disputed by the Id. Counsel for the Appellant Club that the Counsel appearing for the said Club on 25th March, 2022 in the concerned suit, had duly accepted the summons on behalf of the Appellant Club.

18. In the opinion of this Court, merely because the management of the club had been changed, the same would not constitute a justifiable ground for extending the time for filing the written statement in terms of Rule 4 of Chapter VII of DHC Original Side Rules. It is also not the case of the Appellant Club that the Counsel who had appeared on 25th March, 2022 on its behalf was not duly authorised by the said Club. It deserves to be noted that the matter was also listed before the Id. Joint Registrar on 4th May, 2022



after the new management had taken over, however, on the said date, there was no appearance on behalf of Appellant Club.

19. Rule 4 of Chapter VII of DHC Original Side Rules being mandatory in nature the 120 days limitation period stipulated under the said Rule would begin from 25th March, 2022 *i.e.*, the date when summons was issued and duly accepted on behalf of the Appellant Club.

20. It is noted that on the date on which the new management is stated to have appeared for the first time before the Court in the concerned suit *i.e.*, 31st May, 2022, the outer period of limitation of 120 days had not been exhausted. Thus, the Appellant Club could have still filed the written statement at that stage, but it chose not to do so, *albeit* on the ground that the representation of the Respondent/Plaintiff to the new management was under consideration in terms of the direction passed by the Id. Single *vide* order dated 31st May, 2022 in the concerned suit. However, as is clear from the said order of the Id. Single Judge, there is no direction regarding exclusion of the time taken for consideration of the said representation from the stipulated time for filing of written statement.

21. The purpose of fixing an outer time limit under Rule 4 of Chapter VII of the DHC Original Side Rules for filing the written statement is to ensure that the delay in filing of written statement does not lead to further delay in adjudication of civil suits. The validity of this Rule having been upheld by the Division Bench in ***Manhar Sabharwal (supra)***, the said Rule becomes mandatorily applicable to all suits including non-commercial suits before the Delhi High Court (Original Side). Accordingly, the Court can only extend the period of 30 days for filing of written statement by further 90 days, but not beyond the period of 120 days in total in the opinion of this Court. The



language of Rule 4, Chapter VII of the Delhi High Court (Original Side) is clear when it uses the term '*not thereafter*', as is seen from the text extracted above.

22. In view of the applicable rule, the delay in filing of the written statement in the present case would not be liable to be condoned, and accordingly, the impugned order does not warrant any interference.

23. Needless to add, the right of the Appellant Club to participate in the suit proceedings including for framing of issues, cross-examination etc., can be availed of by the Club. Further, the Court has been informed that the other Defendants *i.e.*, the erstwhile management of the Appellant Club have already filed their written statements and the same are on record.

24. Accordingly, the present appeal is dismissed.

25. Pending Application(s), if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

SEPTEMBER 27, 2024

dj/nk/pr/ms