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

+ CM(M)-IPD 9/2024 & CM 50/2024

DAYANAND ANGLO VEDIC TRUST AND MANAGEMENT
SOCIETY & ANR.Petitioners

Through: Mr. Milind Srivastava, Advocate.

versus

KAVIRAJ KHAJAN CHAND QUETTA DAV PUBLIC SCHOOL

.....Respondent

Through: Mr. Abhishek Dhingra and Ms.
Kanika Mitra, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

18.02.2026

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1. This petition is filed on behalf of the Petitioners under Article 227 of the Constitution of India challenging order dated 18.03.2024 passed by the learned District Judge (Commercial), Tis Hazari Courts, Central District, Delhi, whereby application under Order VIII Rule 1 CPC filed by the Respondent for taking on record the written statement has been allowed.

2. To the extent necessary the facts as pleaded by the Petitioners are that Petitioner No.1, which is a registered society and Petitioner No.2, which is the executive body managing Petitioner No.1, filed a suit bearing CS (COMM) No. 568/2023 on 29.03.2023 seeking permanent and mandatory injunctions and rendition of accounts against the Respondent herein, after it was learnt that Respondent was running a school in the name and style of 'Kaviraj Khazanchand Quetta DAV Senior Secondary School'. Petitioners



claimed to have registrations in the trademark D.A.V and its formative marks.

3. It is stated that on 01.04.2023, learned Trial Court issued summons to the Respondent, which were received on 06.05.2023 and Respondent entered appearance through its counsel on 30.05.2023, on which date the counsel stated that he had not received complete copy of the plaint and documents. This submission was not accepted by the Court on the ground that complete set was served on the Respondent along with the summons. However, on repeated request of the counsel, another set of plaint/documents was sent by Petitioners' counsel through WhatsApp.

4. It is stated that on 07.07.2023, counsel for Respondent again took an objection that pages 142 to 146 were not legible and on this the Trial Court directed the counsel for Petitioners to supply legible copies of the said pages and directed Respondent to file written statement within 30 days. On 17.08.2023 further time was sought by Respondent to file written statement on the ground that the documents required to be file were of pre-independence period. Since 30 days had expired and Respondent had not filed the written statement, Trial Court did not grant further time and listed the matter for Petitioners' evidence.

5. It is stated that on 13.10.2023, PW-1 tendered his evidence by way of affidavit. However, to delay the matter, Respondent once again took the excuse of non-supply of legible copies for not filing the written statement. Trial Court refused to accept this submission and directed the counsel for Respondent to cross-examine PW-1 and advance argument on the application under Order XXXIX Rules 1 and 2 CPC. Counsel for Respondent expressed his inability to argue stating that he was not prepared.



Taking a lenient view, Trial Court adjourned the matter to 18.12.2023, on which date Respondent's counsel repeated his request for legible copies of the documents and in good faith Petitioners' counsel sent another set on WhatsApp to the counsel for the Respondent and matter was adjourned to 21.02.2024.

6. When the matter was listed on 21.02.2024, it was revealed that Respondent had filed the written statement on 10.11.2023 but without an application for condonation of delay. Petitioners objected to the written statement being taken on record having been filed beyond the prescribed period of limitation. Trial Court observed in the order that complete set of documents had been supplied on 12.07.2023 and the submission of the Respondent was not *bona fide*. On 01.03.2024, Respondent filed an application under Order VIII Rule 1 CPC seeking condonation of delay in filing the written statement to which Petitioners filed a reply stating that since 120 days had passed from 12.07.2023, written statement could not be taken on record. After hearing both sides, by order dated 18.03.2024, Trial Court allowed the application and took the written statement on record. Aggrieved by this order, Petitioners have filed the present petition.

7. Counsel for the Petitioners submits that the order of the Trial Court is illegal and arbitrary and deserves to be set aside. Trial Court had recorded in order dated 30.05.2023 that summons were served on the Respondent along with complete set of plaint and documents. Subsequently, in multiple orders dated 17.08.2023, 13.10.2023 and 21.01.2024 including in the impugned order dated 18.03.2024, Trial Court recorded that complete set of documents were supplied to the Respondent on 12.07.2023, however, contrary to these observations and without any reasoning, Trial Court allowed the application



of the Respondent under Order VIII Rule 1 CPC and took the written statement on record. Significantly, Trial Court observed in the impugned order that Respondent had never challenged the sending of the documents through WhatsApp and had in fact the written statement filed on 10.11.2023 was sent to counsel for the Plaintiffs through WhatsApp but ignoring this observation, Trial Court allowed the application on the ground that High Court Rules do not recognise service through WhatsApp and that the Supreme Court has held that any communication between the parties through instant messaging service, should be done through e-mail also. The operative part of the impugned order does not even state which High Court Rule and/or judgment of the Supreme Court was relied upon by the Trial Court.

8. Learned counsel for the Respondent defends the impugned order and submits that service of documents through WhatsApp is not a recognised mode of service and hence, 12.07.2023 cannot be taken for computing the commencement date for filing written statement. It is urged that counsel for the Petitioners wrongly informed the Trial Court that complete set of documents had been furnished on 12.07.2023, whereas the fact is that it was only on 13.10.2023 that the counsel for Respondent received complete and legible set of the plaint and documents. If the complete set was served on 12.07.2023 as alleged, there was no occasion for Petitioners' counsel to serve the documents on 13.10.2023 via WhatsApp. Hence, if the period of limitation is taken from 13.10.2023, the written statement filed on 10.11.2023 is within the period of limitation.

9. Heard learned counsels for the parties and examined their submissions.



10. The only question this Court is called upon to decide is whether the learned Trial Court has rightly allowed the application filed by the Respondent under Order VIII Rule 1 CPC taking the written statement filed by the Respondent on 10.11.2023, on record.

11. From a reading of the impugned order itself, it emerges that summons of the suit were served on the Respondent on 06.05.2023 through registered post and on 18.05.2023 through process server. On 30.05.2023, counsel for Defendant appeared and pointed out that complete paper book was not received, however, the Trial Court did not accept this submission since complete paper book was sent with the summons. On 07.07.2023, counsel for Respondent submitted that pages 142 to 146 of the paper book were not legible and Petitioners were directed to provide the legible pages. Respondent was given 30 days time to file the written statement. On the next hearing date i.e., 17.08.2023, Court was informed by the Petitioners that legible copies had been furnished on 12.07.2023 through WhatsApp and on this counsel for Respondent sought time to file written statement.

12. Trial Court did not extend the time for filing the written statement since 30 days had expired from 12.07.2023 and listed the matter for Petitioners' evidence on 13.10.2023 with liberty to file written statement as per law. On 13.10.2023, Respondent's counsel stated that he had not received the WhatsApp on 12.07.2023 and since WhatsApp message was received from a new number, he did not open the chat. Not accepting this stand, Trial Court proceeded with examination of PW-1 and on request of Respondent's counsel deferred the cross-examination for 18.12.2023, on which date both counsels sought adjournment and matter was adjourned to 21.01.2024.



13. On 21.02.2024, counsel for Respondent submitted that he had filed the written statement on 10.11.2023 and the same was within limitation since legible documents were supplied only on 13.10.2023. This submission was refuted by counsel for Petitioners. Thereafter, Respondent filed an application on 01.03.2024 seeking condonation of delay in filing the written statement and relying on 'Delhi High Court Rules' in respect of service on Advocates and electronic filing and judgment of the Supreme Court in ***Cognizance for Extension of Limitation, In Re, (2021) 17 SCC 231***. The application was opposed by the Petitioners on the ground that complete set of documents were furnished on 12.07.2023 and this was recorded in the order dated 17.08.2023 and therefore, written statement filed on 10.11.2023 was beyond 120 days and thus the delay could not be condoned.

14. The Trial Court observed that screenshots of WhatsApp chats filed by the Petitioners evidenced that legible documents were sent to the Respondent's counsel on 12.07.2023, which were seen on 16.08.2023 i.e., a day before the hearing date of 17.08.2023. It was further observed that the intention of the Respondent can be seen from the fact that he did not open the chat from 12.07.2023 to 16.08.2023 and had the intention been *bona fide*, he would have seen the chat on time and sought a fresh copy. On the aspect of service of legible documents through WhatsApp, Trial Court noted that this position was never challenged by the Respondent till 01.03.2024, when the condonation of delay application was filed and as a matter of fact Respondent's counsel had himself sent copy of the written statement to counsel for the Petitioners through WhatsApp only and thus cannot be permitted to blow hot and cold at the same time. It was further observed that Respondent's stand that no WhatsApp was received from the Petitioners on



12.07.2023 was contrary to the submission made on 13.10.2023 by the counsel that the documents received were not legible. Having made these observations in favour of the Petitioners and contrary to the earlier orders, the Trial Court allowed the application of the Respondent on the ground that High Court Rules do not recognise service through WhatsApp as proper service and the Supreme Court has held that communications between the parties must be done through e-mail simultaneously.

15. The impugned order dated 18.03.2024 and order sheets prior thereto reflect that Trial Court was convinced that copies of the plaint and documents were served on the Respondent along with summons and were not required to be served again. Yet, Petitioners served another set of legible documents through WhatsApp on 12.07.2023. Respondent's counsel did not refute this position and sought more time to file written statement on the ground that the documents required to be filed were old and pertained to pre-independence period. Trial Court did not grant further time and listed the matter for Petitioners' evidence on 13.10.2023, on which date PW-1 was examined and matter was adjourned for cross examination. Having made these observations consistently in the orders, which were not challenged by the Respondent, it is not understood how the Trial Court suddenly allowed the application by the impugned order without specifying which rule and/or judgment proscribes service of documents and that too for the second time through WhatsApp. Even today, counsel for the Respondent is unable to show any rule or judgment, which prevents service of the documents through WhatsApp and especially, when Respondent chose to serve the written statement through WhatsApp. In light of this, in my view, the matter deserves to be remanded back to the Trial Court for reconsideration of the



application under Order VIII Rule 1 CPC since there is no consideration even on merits.

16. Accordingly, this petition is partially allowed and the matter is remanded to the Trial Court to consider the application afresh, in light of applicable rules and as per law. It is made clear that this Court has not expressed any opinion on the merits of the case.

17. Petition stands disposed of along with the pending application.

JYOTI SINGH, J

FEBRUARY 18, 2026

S.Sharma