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

+ **FAO(OS) 179/2024**

SMT MANJU VARMA & ORS.Appellants

Through: **Mr. Sumit R. Sharma, Advocate**

versus

NARESH VERMA & ANR.Respondents

Through: **Mr. Madan Lal Sharma, Ms.
Tejaswini Verma, Ms. Manika
Gaba, Mr. Vikrant Malwal &
Mr. Abhay Singh, Advs./R1.**

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

ORDER

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08.01.2026

1. The present appeal has been filed under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) read with Section 10 of the Delhi High Court Act, 1966 challenging the Order dated 16.10.2024 (hereinafter referred to as “impugned order”) passed by the learned Single Judge in interim application being I.A No. 41937 of 2024 in CS(OS) No. 72 of 2024 titled as ***Naresh Verma v. Manoj Kumar Jain & Ors.***

2. The Civil Suit was originally instituted by the Plaintiff/Respondent No. 1 seeking declaration/cancellation of the Sale Deed dated 28.01.2021 executed by the Appellants herein in



favour of Defendant no. 1 (Respondent No. 2 herein) as well as consequent decree of declaration, pre-emption and declaration directing Defendant No. 1 to transfer Second Floor of property bearing No. 91, Jain Cooperative House Building Society Limited, known as Bahubali Enclave, Karkardooma, Delhi - 110092 ('suit property') and deliver actual physical possession thereof to the Plaintiff/Respondent No. 1 along with a decree for *mesne* profits and permanent injunction.

3. By way of the impugned order, the learned Single Judge dismissed the application under Order VIII Rule 1 of the CPC, filed by the Appellants seeking condonation of delay in filing their written statement in the aforementioned Civil Suit.

4. Learned counsel appearing on behalf of the Appellants submits that when the aforementioned suit was listed for hearing before this Court, the learned Single Judge, *vide* Order dated 31.10.2024, issued summons to the Appellants in the same. He submits that upon receiving the summons on 09.04.2024, the Appellants, through their counsel, appeared before the learned Joint Registrar whereby, on instructions of the Appellants, a request was made to supply a complete set of copy of the plaint and documents to them.

5. Learned counsel for the Appellants further submits that on the morning of 28.06.2024, his office, situated at D-220 on the lower ground floor at Defence Colony, Delhi, was flooded due to heavy rainfall, due to which, all his files, documents, laptops and computer were destroyed. He submits that due to this unforeseen circumstance, the draft written statement prepared by his office in the present matter got destroyed and remained untraceable and unretrievable. In support



of his contentions, learned counsel for the Appellants has relied upon the photographs of the incident evidencing the said damage which has been annexed as Annexure A-6 to the present appeal.

6. He submits that on apprising this Court about the incident, the learned Single Judge, *vide* order dated 25.07.2024, further granted ten days' time to file the written statement on behalf of the Appellants in light of the losses suffered by him, and subsequently thereafter, the written statement was filed on 27.08.2024 along with the application being I.A No. 41937 of 2024.

7. Learned counsel for the Appellants submits that when the aforesaid application came up for consideration before this Court, the learned Single Judge erroneously recorded that there was a delay of 140 days in filing the written statement, thereby, dismissing the application seeking condonation of delay in view of Chapter VII Rule 4 of the Delhi High Court (Original Side) Rules, 2018.

8. He submits that the repercussions of the dismissal of the application seeking condonation of delay has caused severe prejudice to the Appellants in defending their case. He also submits that the delay caused in filing the written statement was unintentional, unforeseen and solely on account of his personal difficulty as his office was flooded in heavy rains.

9. He further submits that the learned Single Judge erred in calculating the actual amount of delay which is amounting to 96 days instead of 140 days and this period of delay could be condoned in the interest of justice.

10. In view of the foregoing submissions, learned counsel for the



Appellants prays for setting aside of the impugned order as well as to condone the delay in filing the written statement and consequentially, allow the written statement to be taken on record.

11. *Per Contra*, learned counsel appearing on behalf of the Respondent No. 1 vehemently opposes the present appeal and submits that the learned Single Judge has rightly applied the law with regard to filing of written statement which shall be filed by the Defendant within a period of thirty days and may be extended for a period not exceeding ninety days. He submits that since there is a delay of 140 days by the Appellants in filing their written statement in the Civil Suit, the learned Single Judge has rightly dismissed their application under Order VIII Rule 1 of the CPC. In view of the same, he prays that the present appeal be dismissed being devoid of any merit.

12. In support of his contentions, the learned counsel for Respondent No. 1 has placed reliance upon the judgments passed in ***Ram Sarup Lugani v. Nirmal Lugani & Ors.*** 2020 SCC Online Del 1353 and ***Manhar Sabharwal v. High Court of Delhi***, 2024 SCC OnLine Del 5945.

13. Heard the learned counsels for the parties and perused the material placed on record.

14. Before delving into the merits of this case, this Court deems it appropriate to discuss the law governing the maximum time period within which the written statement is supposed to be filed.

15. Chapter VII Rule 4 of the Delhi High Court (Original Side) Rules, 2018, which is applicable to the Original Side proceedings filed before the Delhi High Court by virtue of Section 129 of the CPC,



provides as under:

“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.”

(Emphasis Supplied)

16. It is now settled that the phrase ‘*but not thereafter*’ used in Rule 4 makes it crystal clear that the Rule is mandatory in nature and the Court cannot permit the written statement to be taken on record after the Defendant has exhausted the maximum prescribed statutory limit of 120 days.

17. A similar question arose before the Co-ordinate Bench of this Court in the case of ***Ram Sarup Lugani*** (supra), which judgment was made final upto the Hon’ble Supreme Court. Though the said case deals with condonation of delay in filing replication beyond 45 days but Rules 4 and 5 of the Chapter VII of the Delhi High Court (Original Side) Rules, 2018, are *pari materia* as Rule 4 deals with the limitation of filing written statement whereas Rule 5 deals with the timeline for



filing replication.

18. In the said case, the Division Bench had the occasion to interpret the words '*but not thereafter*', on the basis of judgments of the Hon'ble Supreme Court in other provisions of Acts such as the Arbitration and Conciliation Act, 1996; the Central Excise Act, 1944, etc. where similar words were used. The relevant portion of the aforesaid judgment is reproduced hereinbelow:

"15. This is not the first time that the phrase, "but not thereafter" have been used in the statute. The said preemptory words have been used in other provisions that have come up for interpretation before the Supreme Court. In Union of India v. Popular Construction Co., reported as (2001) 8 SCC 470, the words "but not thereafter" were used in relation to the power of the court to condone the delay in challenging the award beyond the period prescribed under Section 34 of the Arbitration and Conciliation Act, 1996 and the Supreme Court observed as below:—

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.



16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application “in accordance with” that sub-section. **Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that**

“where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court”.

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to “proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow” (Section 17). **Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court.** If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue



in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.”

(emphasis supplied)

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

“8. The Commissioner of Central Excise(appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. *The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) can be available for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision of order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section(1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days.*



The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

(emphasis supplied)

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

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

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

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35. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the



Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”

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

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

X X X X

33.2. The proviso to Section 34(3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates, “but not thereafter”. The



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

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

21. A conspectus of the decisions referred to above leaves no manner of doubt that where ever the phrase “but not thereafter” has been used in a provision for setting a deadline, the intention of the legislature is to treat the same as a preemptory provision. Thus, if Rule 15 of the DHC Rules mandates filing of a replication within a period of 30 days



reckoned from the date of receipt of the written statement, with an additional period of 15 days provided and that too only if the court is satisfied that the plaintiff has been able to demonstrate that it was prevented to do so by sufficient cause or for exceptional and unavoidable reasons, can the time for filing the replication be extended for a further period not exceeding 15 days in any event, with costs imposed on the plaintiff. The critical phrase “but not thereafter” used in Rule 15 must be understood to mean that even the court cannot extend the period for filing the replication beyond the outer limit of 45 days provided in the DHC Rules. Upon expiry of the said period, the plaintiff's right to file the replication would stand extinguished. Any other meaning sought to be bestowed on the above provision, would make the words “but not thereafter”, inconsequential.

31. In view of the aforesaid discussion, it is held that in case of any inconsistency, the provisions of the Delhi High Court (Original Side) Rules, 2018 will prevail over the Civil Procedure Code. The inherent powers contemplated in Rule 16 are not to be exercised to overcome the period of limitation expressly prescribed in Rule 5 for filing the replication. Nor can Rule 5 be circumvented by invoking any other provision or even the inherent powers of the court, contrary to the scheme of the Rules. The phrase, “but not thereafter” used in Rule 5 makes it crystal clear that the Rule is mandatory in nature and the court cannot permit the replication to be taken on the record after the plaintiff has exhausted the maximum prescribed period of 45 days. Any other interpretation will result in causing violence to the DHC Rules.”

19. The above said judgment was followed by the Division Bench



of this Court in other case of **Manhar Sabharwal** (supra) in relation to the limitation of filing the written statement wherein the constitutional validity of the above said Rule 4 was challenged. While upholding the constitutional validity, the Court referred to the decision of the Division Bench of this Court in **Ram Sarup Lugani** (supra).

20. In the present case, it is relevant to note that the Appellants received summons for the Civil Suit on 09.04.2024. However, as the office of the learned counsel for the Appellants flooded due to heavy rains on 28.06.2024, the learned Single Judge, *vide* Order dated 25.07.2024, extended the aforesaid time period by ten days.

21. Admittedly, the written statement was filed on behalf of the Appellants on 27.08.2024, which is after the stipulated period of 120 days from the date of service of summons, i.e., from 09.04.2024. Keeping in view the provision of Chapter VII Rule 4 of the Delhi High Court (Original Side) Rules, 2018, this Bench notes that there is no perversity in the findings as well as in the calculation of the time of delay in filing the written statement by the appellant, holding that, there is a delay of 140 days in filing the written statement which is beyond the stipulated time of 120 days.

22. In view of the above, we find no infirmity in the reasoning of the learned Single Judge in dismissing the application seeking condonation of delay and thus, this Court is of the view that the Impugned Order has been passed in consonance with the settled position of law.

23. Accordingly, the present appeal stands dismissed being devoid



of any merit. The pending application(s), if any, also stands disposed of.

VIVEK CHAUDHARY, J

RENU BHATNAGAR, J

JANUARY 8, 2026/p/sm