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

+ **FAO(OS) 47/2020 & CM.APPL 21622-23/2020**

Date of decision: 19th October, 2020

IN THE MATTER OF:

RAM SARUP LUGANI & ANR ..... Appellants
Through: Mr. Tanmaya Mehta and Mr. Aditya Garg, Advocates

versus

NIRMAL LUGANI & ORS ... Respondents
Through: Mr. Faisal Sherwani and Mr. Gurpreet Singh Kahlon, Advocates for respondents No.1 to 6.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HIMA KOHLI, J.

1. The instant appeal is directed against the judgment and order dated 06.08.2020 passed by a learned Single Judge whereby, Chamber Appeal registered as OA 122/2019, filed by the appellants/plaintiffs in CS(OS) 182/2019, challenging the order dated 30.09.2020, passed by the learned Joint Registrar closing their right to file the replication in response to the written statement of the respondents/defendants, has been dismissed.

2. The appellants/plaintiffs herein had instituted a suit on the Original Side of the court in April, 2019 with the following prayers:-

> *"a. A Decree of Declaration thereby declaring that defendants 1 to 6 are not eligible to continue as Trustee of defendant no. 7 Trust and hence cease to be Trustees of the said Trust and consequently appoint an Administrator to frame a scheme for appointing new Trustees in place of defendants 1 to 6, while retaining plaintiffs as trustees.*
>
> *b. A Decree of Permanent Injunction restraining defendant no.1 from representing herself as a Trustee of Defendant Trust.*
>
> *c. A Decree of Mandatory Injunction directing the defendants to deposit all original title deeds/lease deeds and other ownership documents pertaining to Sector 55 and Sector 62 Schools, with plaintiff no.1 and also return all assets/properties of defendant Trust or of the schools running under the aegis of defendant Trust, i.e. 'Gurugram Public School' to the respective Schools.*
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> *d. A Decree of Recovery of amount from defendants 1 to 6, assessed by a valuer appointed by this Hon'ble Court, for the loss suffered by the Sector 55 School of Defendant Trust, due to loss of vehicles bearing nos. HR26BE4849 & HR26BP2892.*
>
> *e. A Decree of rendition of accounts directing the defendants to render accounts for the period 2011 till date of decree, and further direct the defendants to make good all losses caused by their acts of omission and commission and consequently to replenish all such amounts in to the trust with interest.*
>
> *f. Award cost of suit in favour of plaintiffs.*
>
> *Such other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may kindly*

be granted in favour of the plaintiffs and against the defendants."

3. Summons were issued in the suit and the case was adjourned to 23.07.2019. In the meantime, written statement was filed by the respondents/defendants. When the matter was listed in court on 23.07.2019, learned counsel for the appellants/plaintiffs had stated that he had received a copy of the written statement and the court had granted him four weeks' to file the replication and the affidavit of admission/denial of documents. The suit was directed to be posted before the learned Joint Registrar on 30.09.2019, for further proceedings. On 30.09.2019, when learned counsel for the appellants/plaintiffs had sought for more time from the learned Joint Registrar to file the replication, noting that over two months had lapsed reckoned from 23.7.2019, he had closed their right to do so and directed that admission/denial of the documents of the respondents/defendants be carried out. The order passed by the learned Joint Registrar on 30.09.2019, reads as under:

"Written statement and affidavit of admission/denial of documents filed on behalf of defendants no.1 to 6. Copy supplied.

No replication to the written statement filed. Learned counsel for plaintiff has submitted that he is going to file replication within two weeks along with appropriate application, but same is strongly opposed by learned counsel for defendants on the ground that as per Chapter 7 Rule 5 Delhi High Court (Original Side) Rules, 2018, only 45 days has been granted to the plaintiff to file replication including 15 days time of extension on application, but neither such application moved nor replication filed within 30 days. On 23.07.2019, plaintiff sought time to file replication, but no replication has been filed despite lapse of more than two

months and no ground is made out for further extension of time. Accordingly, opportunity of plaintiff to file replication is hereby closed.

Admission/denial of documents on behalf of defendant qua the documents of plaintiff carried out.

Learned counsel for defendant has admitted six documents of plaintiff which are Ex.P-1 to Ex.P-6. Rest of the documents are denied.

On the other hand, plaintiff has not filed any affidavit of admission/denial of documents qua the documents of defendants due to no admission/denial is carried out on behalf of plaintiff and consequences of non-filing of affidavit of admission/denial shall follow.

List the matter before the Hon'ble Court for issues/further direction on the date already fixed i.e. 01.11.2019."

4. The above order of the Joint Registrar was challenged by the appellants/plaintiffs by filing a Chamber Appeal. Vide judgment/order dated 06.08.2020 impugned herein, the learned Single Judge has dismissed the said Chamber Appeal holding that the replication could not be filed beyond the period of 45 days, as prescribed under Rule 5 of Chapter VII of the Delhi High Court(Original Side) Rules, 2018 (for short 'DHC Rules') and there is no power to condone the delay beyond the time prescribed under the DHC Rules. Aggrieved by the said order, the present appeal has been filed.

5. The short question which arises for our consideration is as to whether in a non-commercial ordinary civil suit, the period prescribed for filing the replication under Rule 5 of Chapter VII of the DHC Rules is directory or mandatory in nature and whether the time prescribed therein, even if not extendable by the Joint Registrar, can still be extended by the court.

6. Arguing for the appellants/plaintiffs, Mr. Tanmaya Mehta, learned counsel submitted that the respondents 1 to 6 had filed a written statement running into over 125 pages and they had filed over 500 pages of documents. Due to the voluminous pleadings in the written statement and the documents filed and the medical condition of the appellant No.1, who is the Managing Trustee of the respondent No.7/Trust and is 93 years of age with constraints in his movement, the appellants and the counsel took some time to prepare the replication. The said delay was not deliberate and ought to have been condoned. Learned counsel places reliance on Desh Raj v. Balkishan, reported as **(2020) 2 SCC 708** wherein, in an appeal arising from a decision of the Delhi High Court, while interpreting the provisions of Order VIII Rule 1 of the CPC, in circumstances where the defendant therein had filed his written statement after a delay of 95 days beyond the maximum extendable period provided under Proviso 2 of Rule 1, Order VIII of the CPC, the Supreme Court has held that the said provision is only directory and not mandatory. Drawing an analogy with the fact situation in the said decision, learned counsel for the appellants/plaintiffs contended that the time period prescribed in Rule 5 of Chapter VII of the DHC Rules is also directory in nature and therefore, it cannot be said that the court is powerless to condone the delay and accept the replication beyond the time prescribed therein.

7. Seeking to distinguish the way Rule 4 and Rule 5 of the DHC Rules are worded, learned counsel for the appellants/plaintiffs submitted that unlike Rule 4, that mandates the Registrar to close the right to file the written statement upon expiry of 120 days, no such rigorous language has been used in Rule 5. Rather, Rule 5 stipulates that upon expiry of 45 days, the Registrar has to place the matter before court for further orders. Therefore, even if the Registrar has no power to condone the delay beyond the period of 45 days,

the court can condone the delay even beyond the said period and take the replication on record.

8. Adverting to Rule 16 in Chapter I of the DHC Rules, learned counsel for the appellant sought to urge that the said Rule stipulates that nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of court and the said provision could have been well invoked by the learned Single Judge in the present case. Placing reliance on Rule 14 of Chapter I that empowers the court to dispense with making compliance of the DHC Rules for sufficient cause shown it was argued that Rules 14 and 16 vest sufficient powers in the court to relax the period prescribed in Rule 5 and permit filing of the replication beyond the period of 45 days. It was sought to be canvassed that if it is held that there is no power vested in the court to condone the delay in filing the replication beyond the period of 45 days, then Rules 14 and Rule 16 will become superfluous.

9. Another argument sought to be advanced on behalf of the appellants/plaintiffs was that when Rule 5 provides that after the period of 45 days, the Registrar has to place the matter before the court for passing appropriate orders, it postulates that discretion still vests in the court to accept the replication even beyond the period of 45 days, on sufficient reasons being offered as to why the same was not filed within the prescribed time. Learned counsel submitted that if the Rule is not construed in this manner, the words '*for appropriate orders*' used in Rule 5, will be rendered nugatory.

10. Referring to the scheme of Chapter VII of the Rules which shows that after the replication, parties are to proceed with admission/denial of

documents which the Registrar can get done himself, learned counsel contended that the very fact that the matter has to be placed in court, shows that there is ample power in the court to accept the replication filed beyond the period of 45 days and that is the reason why the matter is required to be placed before the court to consider as to whether sufficient cause has been shown by a party to condone the delay even beyond the period of 45 days. Lastly, it was submitted that the High Court being a Constitutional court, has the inherent power to accept replications even beyond the time prescribed in the DHC Rules and the said power cannot be circumscribed or curtailed in any manner.

11. A quick glance at the rule position first. Rule 4 falling under Chapter I of the DHC Rules is the definition clause which defines various terms used in the Rules. Rule 4(e) defines "*The Court*" or "*this Court*", while Rule 4(k) defines '*Registrar*' and read as under:

> "***4. Definitions***. *—In these Rules, unless the context otherwise requires:*
>
> *...*
>
> *...*
>
> *(e) "The Court" or "this Court" means the Delhi High Court;*
>
> *....*
>
> *...*
>
> *(k) "Registrar" means and includes the Registrar and Joint Registrar, respectively of the Court, and includes any other officer of the Court to whom the powers and functions of the Registrar under these Rules, may be delegated or assigned;"*

12. Chapter VII of the DHC Rules lays down the procedure for appearance by the defendant, of filing of the written statement, set off, counter-claim and

replication. Rule 4 and Rule 5 of Chapter VII are relevant for this case and read 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.*
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> ***5. Replication**.-The replication, if any, **shall** be filed within 30 days of receipt of the written statement. If the Court is satisfied that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons in filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days **but not thereafter**. For such extension, the plaintiff shall be burdened with costs, as deemed appropriate. The replication shall not be taken on record, unless such costs have been paid/ deposited. In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before the Court. An advance copy of the replication together with legible copies of all documents in possession and power of plaintiff, that it seeks to file along with the replication, shall be served on the defendant and the replication together with the said documents shall not be accepted unless it contains an endorsement of service signed by the defendant/ his Advocate."* (emphasis supplied)

13. Rules 14 and 16 of Chapter I of the DHC Rules that lays down the general provisions, read as under:

> *"**14. Court's power to dispense with compliance with the Rules.-** The Court may, for sufficient cause shown, excuse parties from compliance with any requirement of these Rules, and may give such directions in matters of practice and procedure, as it may consider just and expedient.*
>
> *[Provided where the Court/Judge is of the opinion that Practice Directions are required to be issued, he may make it suitable reference to the Hon'ble Chief Justice.]"*
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> *...*
>
> *...*
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> *"**16. Inherent power of the Court not affected.-** Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court."*

14. The term "*The Court*" and "*Registrar*" have been defined in Rule 4 that is a part of Chapter I of the Rules. On a reading of Rule 5 it is clear that the replication, if any, should be filed within a period of 30 days from the date of receipt of the written statement. The word "*shall*" used in the said Rule postulates that the replication must be filed within 30 days of the receipt of the written statement. The Registrar does not have the power to condone any delay beyond 30 days. The permission to condone the delay beyond the period of 30 days, lies with the court. If the court is satisfied that the plaintiff was prevented by sufficient cause or for exceptional and unavoidable reasons from filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days with a suffix appended to the Rule stating, "*but not thereafter*". The phrase "*but not thereafter*" mentioned in the Rule indicates that the intention of the rule making

authority was not to permit any replication to be entertained beyond a total period of 45 days. If any other interpretation is given to the said Rule, then the words "*but not thereafter*", will become otiose.

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 & Ors, 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 & Anr, 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.*

X X X X

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.*"* (emphasis supplied)

18. We may also profitably refer to Bengal Chemists and Druggists Association v. Kalyan Chowdhury, reported as **(2018) 3 SCC 41**, where while examining the provisions of the Companies Act, the Supreme Court made the following observations:

*"**3.** Before coming to the judgments of this Court, it is important to first set out Section 421(3) and Section 433 of the Act. These provisions read as follows:*

*"**421. Appeal from orders of Tribunal**.—(1)-(2) * * **

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. ...

* * *

***433. Limitation**.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be."*

> ***4.*** *A cursory reading of Section 421(3) makes it clear that the proviso provides a period of limitation different from that provided in the Limitation Act, and also provides a further period not exceeding 45 days only if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. Section 433 obviously cannot come to the aid of the appellant because the provisions of the Limitation Act only apply "as far as may be". In a case like the present, where there is a special provision contained in Section 421(3) proviso, Section 5 of the Limitation Act obviously cannot apply.*
>
> ***5. Another very important aspect of the case is that 45 days is the period of limitation, and a further period not exceeding 45 days is provided only if sufficient cause is made out for filing the appeal within the extended period. According to us, this is a peremptory provision, which will otherwise be rendered completely ineffective, if we were to accept the argument of the learned counsel for the appellant. If we were to accept such argument, it would mean that notwithstanding that the further period of 45 days had elapsed, the Appellate Tribunal may, if the facts so warrant, condone the delay. This would be to render otiose the second time-limit of 45 days, which, as has been pointed out by us above, is peremptory in nature.***" (emphasis supplied)

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 & SewerageBoard 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] .)*
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> ***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."*(emphasis supplied)

20. In New India Assurance Company Limited v. Hili Multipurpose Cold Storage Private Limited, reported as **(2020) 5 SCC 757**, the issue before the Supreme Court was whether Section 13(2)(a) of the Consumer Protection Act, 1986 that provides for the respondent/opposite party to file its response to the complaint within 30 days or such extended period, not extending 15 days, should be read as mandatory or directory i.e. whether the District

Forum would have the power to extend the time for filing the response beyond the period of 15 days, in addition to 30 days. The Supreme Court has answered the said question in the following words:

> *"**20.** The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be to the satisfaction of the authority concerned. No such discretion has been provided for under Section 13(2)(a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days).* ***Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals. To carve out an exception in a specific provision of the statute is not within the jurisdiction of the courts, and if it is so done, it would amount to legislating or inserting a provision into the statute, which is not permissible.***
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> *X X X X*
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> ***25.*** *The contention of the learned counsel for the respondent is that by not leaving a discretion with the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as there could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days.* ***In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it.***
>
> *X X X X*

> ***27. It is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground****."* (emphasis supplied)

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.

22. The next contention of Mr. Mehta that the words *"the Registrar shall forthwith place the matter for appropriate orders before the court"* used in Rule 5 of the DHC Rules indicates that the court would still have the power to accept a replication filed beyond a period of 45 days, is also untenable. The Supreme Court has emphasized that the answer to the problem as to whether a statutory provision is mandatory or is directory in nature, lies in

the intention of the law maker, as expressed in the law itself. The words *"replication, if any,* ***shall*** *be filed within 30 days of the receipt of the written statement*" and further, the words "*further* ***period not exceeding*** *15 days,* ***but not thereafter****"* used in Rule 5 will lose its entire meaning if we accept the submission made on behalf of the appellants that even if the timeline for filing the replication cannot be extended by the Registrar, there is no such embargo placed on the court.

23. The court must start with the assumption that every word used in a statute, has been well thought out and inserted with a specific purpose and ordinarily, the court must not deviate from what is expressly stated therein. The period granted for filing the replication under Rule 15 of the DHC Rules is only 30 days and on expiry of 30 days, the court can only condone a delay which does not exceed 15 days over and above 30 days and that too on the condition that the plaintiff is able to offer adequate and sufficient reasons explaining as to why the replication could not be filed within 30 days. As observed earlier, since the terms '*Court*' and '*Registrar*' have been defined in the DHC Rules, Rule 5 requires that the court alone can extend the time to file the replication beyond the period of 30 days from the date of receipt of the written statement. Even the discretion vested in the court for granting extension of time is hedged with conditions and the outer limit prescribed is 15 days. If the replication is not filed within the extended time granted, the Registrar is required to place the matter back before the court for closing the right of the plaintiff to file the replication.

24. A reading of the relevant provisions of the DHC Rules shows that it is a special provision within the meaning of Section 29(2) of the Limitation Act (for short 'the Act'), that contemplates that where any special or local law prescribes a time limit that is different from the one provided for under the

Limitation Act, 1963, then Section 4 to Section 14 of the Limitation Act, 1963 would be expressly excluded. It is well settled that even in a case where the special law does not exclude the provisions of Section 4 to Section 14 of the Limitation Act, 1963 by an express provision or reference, then too, if it is clear from the mandate or the language of the statute, the scheme of the special law will exclude the application of Section 4 to Section 14 of the Limitation Act, 1963. (Ref: Hukumdev Narain Yadav v. Lalit Narain Mishra, reported as **(1974) 2 SCC 133**).

25. It is equally well settled that when the provision of a law/statute prescribes specific provisions, then those provisions cannot be sidestepped or circumvented by seeking to invoke the inherent powers of the court under the statute. The principles required to be followed for regulating the inherent powers of the court in the context of applying the provisions of Section 151 CPC, have been highlighted in State of Uttar Pradesh & Ors. v. Roshan Singh & Ors., reported as **(2008) 2 SCC 488**, wherein the Supreme Court has observed as under:

> *"**7.** The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require.* ***If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure.*** *The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.*

> ***8.*** *The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it.* ***If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act.****"* (emphasis supplied)

26. Yet again, expounding on the inherent powers of the court and the fetters placed on it, in K.K. Velusamy v. N. Palanisamy, reported as **(2011) 11 SCC 275**, the Supreme Court has made the following pertinent observations:

> *"**12.** The respondent contended that Section 151 cannot be used for reopening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that Section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of Section 151 has been explained by this Court in several decisions [see Padam Sen v. State of U.P. [AIR 1961 SC 218 : (1961) 1 Cri LJ 322] , Manohar Lal Chopra v. Seth Hiralal [AIR 1962 SC 527] , Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] , Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava [AIR 1966 SC 1899], Nain Singh v. Koonwarjee [(1970) 1 SCC 732] , Newabganj Sugar Mills Co. Ltd. v. Union of India [(1976) 1*

SCC 120 : AIR 1976 SC 1152] , Jaipur Mineral Development Syndicate v. CIT [(1977) 1 SCC 508 : 1977 SCC (Tax) 208 : AIR 1977 SC 1348] , National Institute of Mental Health & Neuro Sciences v. C. Parameshwara [(2005) 2 SCC 256] and Vinod Seth v. Devinder Bajaj [(2010) 8 SCC 1 : (2010) 3 SCC (Civ) 212]]. We may summarise them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.

(c) A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with

the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case. The absence of an express provision in the Code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.*"* (emphasis supplied)

27. Since the language of Rule 5 shows that the intention of the Rule making Authority was to exclude the provisions of the Limitation Act, 1963, giving no power to the court to condone any delay beyond the period of 45 days for accepting the replication, learned counsel for the appellants/plaintiffs cannot be heard to state that Rule 16 could have been very well invoked by the learned Single Judge to take on record the belatedly filed replication. The sanctity of the period of 30 days, extendable by another period of 15 days cannot be diluted by giving such an interpretation. In view of the specific provision and the timeline stated in Rule 5 of Chapter VII, that precludes the court from extending the timeline beyond 45 days for accepting the replication, the argument advanced by Mr. Mehta, learned counsel for the appellants/plaintiffs that notwithstanding Rule 5, provisions of Rule 16 and Rule 14 of Chapter I of the DHC Rules empower the court to take on record, the replication even beyond the period of 45 days and ought to have been resorted to by the learned Single Judge, cannot be accepted

28. In our opinion, reliance placed by Mr. Mehta on Desh Raj (supra), is also misplaced. No doubt, the Supreme Court has held that a reading of proviso 2 appended to Rule 1 of Order VIII would show that the said Rule is

only directory and not mandatory, ultimately the Supreme Court has refused to condone the delay in that case. In fact, the said decision is not applicable to the facts of this case for the reason that in the said judgment, there was no occasion to deal with the scope and effect of Rule 5 of Chapter VII of the DHC Rules. In any event, the DHC Rules will have an overriding effect on the CPC. Notably the Code does not provide for filing of any replication. Order VI, Rule 1 describes "pleadings" to mean plaint or written statement. It is the Delhi High Court (Original Side) Rules, 2018 that provides a time limit for filing the replication and since the said Rules regulate the procedure, the same will have to prevail over the Code. We are in complete agreement with the view taken by the Division Bench of this court in DDA and Another Vs. K.R. Builders (P) Ltd., reported as **2005 (81) DRJ 708** and relied on in HTIL Corporation, B.V. & Ors. v. Ajay Kohli & Ors., reported as **(2006) 90 DRJ 410**, where it was observed as under:

> *"**6.** The question as to whether the CPC or the Original Side Rules will apply was considered by a Division Bench of this court in the recent case of DDA & Anr. v. K.R. Builders P. Ltd., 2005 (81) DRJ 708 (DB).* ***The finding of the Division Bench supported the view of the learned defence counsel that suits filed on the original side of this court would be governed by the rules framed by the High Court to the exclusion of the provisions of the CPC wherever the field is occupied by these Rules and that this court has the power to extend the time for filing the written statement even beyond 90 days****. However, the Division Bench also clarified that Rule 3, as it then stood, of Chapter IV of the Delhi High Court (Original Side Rules) does not contemplate unending extensions to be granted on the asking. Rule 3 provided as under:*
>
> > *"3. Extension of time for filing written statement.— Ordinarily, not more than one extension of time shall be*

granted to the defendant for filing a written statement provided that a second or any further extension may be granted only on an application made in writing setting forth sufficient grounds for such extension and supported, if so required, by an affidavit."

7. *The Division Bench pointed out that as per the rule quoted above, only one extension of time was to be granted for filing written statement and that the second or further extension may be granted only on an application made in writing setting forth sufficient grounds. It was also pointed out that the expression 'any further extension' in this proviso does not contemplate unending extensions on the asking and that 'any further extension' should receive a restricted interpretation. The situation has now changed since the Delhi High Court (Original Side Rules) have also been amended. The amendment which has taken effect on 9.1.2006 is now as under:*

*"**3. Extension of time for filing written statement.**— Where the defendant fails to file written statement within the period of 30 days as stated in Rule 2(ii) he shall be allowed to file the same on such other day as may be specified by the Court on an application made in writing setting forth sufficient ground for such extension and supported, if so required, by an affidavit but such day shall not be later than 90 days from the service of summons."*

8. In view of this amendment, the Delhi High Court (Original Side Rules) give the same time schedule for filing a written statement. Written statement, therefore, can be filed within 30 days and thereafter on sufficient ground for such extension being shown on an affidavit but such extension shall not be later than 90 days from the date of service.*"*(emphasis supplied)

29. In M/s Print Pak Machinery Ltd. v. Jay Kay Papers Converters, reported as **AIR 1979 Del 217**, answering a reference placed before it for reconciling the consistency between the scheme of Order 37 of the CPC, as amended in 1976 and the provisions Chapter XV of the Delhi High Court (Original Side) Rules, 1967 that deals with "*summary suits*", a Full Bench of this court held that the Rules will take a precedence over the Code and observed as under:-

> *"**8.** I think, the question is really concluded by Section 129 of the Code. It reads:*
>
> > *"Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code."*
>
> *No doubt the closing words will not save the Original Side Rules of this Court, as they were not 'in force at the commencement' of the Code. But, the opening words 'Notwithstanding anything in this Code' are self-effacing, and subordinate the Code to rules made by a High Court for its original side at any time.* ***The cumulative effect of those two parts of the section is to leave untouched the original rules of a High Court whether framed before or after 1908. Since section 2(1) says that the '"Code" includes rules', the original side rules will prevail both over the body of the Code and the First Schedule. Therefore, the statement in Order 37 rule 1(a) that 'This order shall apply to……..High Courts' must be read subject to section 129****.*

9. *These propositions are old and well-established. In* ***Newab Behram Jung v. Haji Sultan Ali Shustry, ILR 27 Bombay 572 (1)*** *it was held that, in view of section 129, a rule in the Code did not apply as it was inconsistent with a rule in the Bombay High Court Rules. Similarly,* ***in Virupaksha Rao Naidu v. M. Ranganayaki Ammal, AIR 1925 Madras 1132 (2)****, it was said:*

> *'Section 129 of the Code gives the High Court the power to make rules, regulating the procedure of the Original Side and nothing in the Code will affect such rules. The effect is that if the rules of the High Court, Original Side, and the Code are inconsistent, the rules prevail.'*

Many cases from Calcutta hold the same: Umeshchandra Banerji v. Kunjilal Biswas, AIR 1930 Calcutta 685 (3), Gowal Das Sidany v. Luchmi Chand Jhawar, AIR 1930 Calcutta 324 (4); In re: Ram Dayal De, AIR 1932 Calcutta 1 (5); Shaw & Co. v. B. Shamaldas & Co., AIR 1954 Calcutta 369 (6) and Manickchand Durgaprasad v. Pratabmull Rameswar, AIR 1961 Calcutta 483 (7). And, so does the High Court of Allahabad: Mool Chand v. Kamta Prasad, AIR 1961 Allahabad 595 (8).

11. *The conclusion thus drawn from section 129 can also be reached from section 4(1) of the Code, though not in the manner that was suggested in argument. Section 4(1) of the Code provides that:*

> *'In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.'*

It has been held that rules made by a High Court or the Supreme Court to regulate their procedure and practice are a 'special law' as they deal with a particular subject: *The Union of India v. Ram Kanwar, AIR 1962 SC 247 (11); Punjab*

> *Co-operative Bank Ltd., Lahore v. Official Liquidators, Punjab Cotton Press Co. Ltd. (in liquidation), AIR 1941 Lahore 257 (12) and The Deities of Sri Audinarayana Swamy and Anjenayaswami Temples of Donepudi v. R. Hanumacharyulu, AIR 1962 AP 245 (13). Nevertheless, the Original Side Rules of Delhi High Court would not be protected by section 4(1) of the Code.* ***Only those 'special laws' are saved which are 'now in force', which means 1908. But, they are a 'special form of procedure prescribed' by or under a law 'for the time being in force', and would be covered on that account. There is no 'specific provision to the contrary' and the result is that nothing in the Code 'shall be deemed to limit or otherwise affect' anything in the Original Side Rules.*** *"*(emphasis supplied)

30. To answer the last plea taken by Mr. Mehta, learned counsel for the appellants/plaintiffs that a Constitutional Court cannot be denuded of the power to condone the delay in filing the replication even if the power of the High Court to condone delay in relation to periods prescribed in the DHC Rules has been circumscribed, we need not travel beyond Pallav Sheth v. Custodian, reported as **(2001) 7 SCC 549**, where the Supreme Court has observed as under:

> *"**31.** This Court has always frowned upon the grant or existence of absolute or unbridled power. Just as power or jurisdiction under Article 226 has to be exercised in accordance with law, if any, enacted by the legislature, it would stand to reason that the power under Article 129 and/or Article 215 should be exercised in consonance with the provisions of a validly enacted law. In case of apparent or likelihood of conflict the provisions should be construed harmoniously."*

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.

32. In view of the above, we do not find any infirmity in the impugned order whereby the Chamber Appeal filed by the appellants/plaintiffs was dismissed. The present appeal is accordingly dismissed as meritless, along with the pending applications.

HIMA KOHLI, J.

SUBRAMONIUM PRASAD, J.

OCTOBER 19, 2020
pst/ap/na