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

Date of decision: 15th JANUARY, 2026

IN THE MATTER OF:

\+ **CS(OS) 464/2023**

ADESH KUMAR GUPTA .....Plaintiff

Through: Mr. Manish Kaushik, Mr. Vikas Ashwani, Mr. Mainak Sarkar, Advs.

versus

SUNIL BANSAL & ANR. .....Defendants

Through: Mr. Arun Kumar Varma, Sr. Adv with Mr. Abhishek Kumar, Ms. Twinkle Kataria and Mr. Shubham Singh, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

**I.A. 39861/2024**

1. Learned Counsel appearing for the Plaintiff seeks permission to withdraw the present application.

2. Permission, as sought for, is granted.

3. The application is disposed as withdrawn.

**O.A. 127/2024**

1. The present Chamber Appeal under Rule 5 Chapter II of the Delhi High Court (Original Side) Rules, 2018 has been filed by Defendants against the Order dated 23.07.2024 passed by the Ld. Joint Registrar.

2. By way of the Order dated 23.07.2024, the Ld. Joint Registrar dismissed the application filed by the Defendants seeking condonation of

delay in filing the written statement.

3. On 06.12.2023, summons was issued to the Defendants, on which date, the Defendants were present in Court. Thus, taking 06.12.2023 as the *terminus a quo* for calculating the limitation period, the written statement ought to have been filed on or before 05.01.2024.

4. Material on record indicates that the written statement was filed along with an application for condonation of delay of 99 days in filing the same.

5. Reference, in this regard, is made to Rules 2 & 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018, which lay down the period of limitation for filing the written statement and the same is being reproduced as under:-

> ***"2. Procedure when defendant appears.—****If the defendant appears personally or through an Advocate before or on the day fixed for his appearance in the writ of summons:—*
>
> *(i) where the summons is for appearance and for filing written statement, the written statement shall not be taken on record, unless filed within 30 days of the date of such service or within the time provided by these Rules, the Code or the Commercial Courts Act, as applicable. An advance copy of the written statement, together with legible copies of all documents in possession and power of defendant, shall be served on plaintiff, and the written statement together with said documents shall not be accepted by the Registry, unless it contains an endorsement of service signed by such party or his Advocate.*
>
> *(ii) the Registrar shall mark the documents produced by parties for purpose of identification, and after comparing the copies with their respective originals, if they are found correct, certify them to be so and return the original(s) to the concerned party.*

*xxx*

> ***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."*

6. A perusal of the aforesaid Rules indicate that after the expiry of 30 days, the written statement can be filed within a further period of 90 days, provided a sufficient explanation is given by the defendant as to why the written statement could not be filed within 30 days.

7. Applying the above Rules to the timeline in the present case, the written statement should have been filed on or before 05.04.2024. However, the written statement has been filed by the Defendants on 15.07.2024 and even according to the Defendants, there is a delay of 99 days over and above the period of total 120 days, which is the maximum period permissible for filing the written statement.

8. The reasons given before the Ld. Joint Registrar in the application seeking condonation of delay in filing the written statement, was that the Defendants had to go through several documents and voluminous record to

file a proper response in the form of written statement. It was stated that substantial time was consumed to clarify the false and frivolous averments made by the Plaintiff in the Plaint. It was averred that the Defendants had to get information from multiple departments, which took a lot of time, and thereafter, the officials of the company got busy due to the closing of financial year and the Defendant being the Executive Director had to be involved in various compliances which occasioned the delay.

9. The issue as to whether there is a power vested with the Court to condone the delay beyond the maximum period prescribed in Chapter VII of the Delhi High Court (Original Side) Rules, 2018 is no longer *res integra*. A Division Bench of this Court in Ram Sarup Lugani v. Nirmal Lugani, **2020 SCC OnLine Del 1353**, has observed as under:

> "***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, 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.*

*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.*

*X X X X*

*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 Concilliation 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].)*

*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.*
>
> *X X X X*
>
> *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 v. Roshan Singh, 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)*

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***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 v. K.R. Builders (P) Ltd., reported as (2005) 81 DRJ 708 and relied on in HTIL Corporation, B.V v. Ajay Kohli, 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 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)"*

10. The aforesaid Judgment was followed by a Coordinate Bench of this Court in Ms. Charu Agarwal Vs. Mr. Alok Kalia & Ors., **2023 SCC OnLine Del 1238,** while dealing with the power to condone delay in filing Written Statement.

11. Additionally, another Co-Ordinate Bench of this Court in Amarendra Dhari Singh v. R.C. Nursery Pvt. Ltd., **2023 SCC OnLine Del 84,** after placing reliance on the Ram Sarup Lugani (supra) has observed as under:

"*24. Rule 4 of the Rules, though in the opening part thereof states that the Court may extend the time for filing the written statement by a further period not exceeding 90 days, 'but not thereafter', further goes on to state that 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. It is settled principle of law that the word 'may' is not a word of compulsion; it is an enabling word and implies discretion unless it is coupled with a duty or the circumstances of its use otherwise warrants. The use of*

*word 'may' in Rule 4 is to confer a discretion in the Registrar in a given case not to close the right of the defendant to file the written statement even though the same has not been filed within the extended time. The discretion that was left in the Court under Order VIII Rule 1 read with Order VIII Rule 10 of the CPC as applicable to non-commercial suits, has been continued by the Rules.*

*25. It is to be kept in mind that the High Court of Delhi, at the time of notifying the Rules in 2018, had the benefit of the CPC as applicable to non-commercial suits as also the special provisions applicable to Commercial Suits under the Commercial Courts Act, 2015. The High Court would have been well aware of the interpretation placed by the Courts on these provisions, laying special emphasis on the words used therein. The High Court did not choose the language of the Commercial Courts Act. This shows the intent of the High Court, in its Rule making power, not to foreclose the discretion vested in the Court/Registrar to condone the delay even beyond 120 days of the service of summons if sufficient cause is shown for such non-filing. It is settled law that use of same language in a later statute as was used in an earlier one in pari materia is suggestive of the intention of the legislature that the language so used in the later statute is used in the same sense as in the earlier one, and change of language in a later statute in pari materia is suggestive that change of interpretation is intended.*

*26. Applying the above principle, it must be held that the High Court, not having adopted the language of the Commercial Courts Act, but of the CPC as applicable to non-commercial suits, did not intend the Court to be completely denuded of its power to condone the delay in filing of the written statement beyond 120 days of the service of the summons.*

*27. Of course, in considering the delay beyond 120 days, the court will adopt an even more harsh and strict yardstick in determining the sufficiency of cause shown, as has been held in Kailash (supra).*

*28. In Ram Sarup Lugani (supra), a Division Bench of this Court was considering Rule 5 of Chapter VII of the Rules, which read as under:—*

> *CHAPTER VII*
>
> *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 filling 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)*

*29. The Division Bench laying emphasis on the words 'but not thereafter', held that the Court cannot extend*

*the period for filing the replication beyond the outer limit of 45 days as mandated in the Rules, and upon expiry of the said period, the plaintiff's right to file the replication would stand extinguished. However, it must be noticed that unlike Rule 4 of the Rules which states that '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', no such discretion was vested in the Registrar or the Court by Rule 5 of the Rules. Rule 5, in fact, mandates the Registrar to forthwith place the matter for appropriate order before the Court. This difference in language used cannot also be said to be without any purpose. The judgment in Ram Sarup Lugani (supra), therefore, cannot govern the interpretation to be placed on Rule 4 of the Rules.*

*30. In Harjyot Singh (supra), the learned Single Judge of this Court, placing reliance on the Ram Sarup Lugani (supra), held that the Court does not have the power to condone a delay of beyond 90 days in filing of the written statement. However, in holding so, the learned Single Judge did not take notice of the difference between Rule 4 and Rule 5 of the Rules, as has been highlighted hereinabove. It also did not take note of the earlier judgment of the Division Bench of this Court in Esha Gupta (supra), which taking note of Rule 4 of the Rules and placing reliance on Desh Raj (supra), condoned the delay in filing of the written statement beyond the period of 120 days of service of summons.*

*31. In view of the above, it is held that though normally the learned Registrar/Court, in a non-commercial Suit, shall not condone the delay in filing of the Written Statement beyond a period 120 days of the service of summons on the defendant, the learned Registrar/Court may, for exceptionally sufficient cause being shown by the defendant for not filing the written*

> *statement even within the extended time, grant further extension of time to the defendant to file the Written Statement. On such exceptionally sufficient cause been shown by the defendant, the Court is not powerless. It must exercise the discretion vested in it to ensure that procedural law does not trump over the endeavour to ensure that justice is done and the defendant is not condemned unheard. Again, even while exercising such discretion in favour of the defendant, the Court may adequately compensate the plaintiff and burden the defendant with exemplary costs so that injustice is not done to the plaintiff as well. The above cited test propounded by the Supreme Court in Kailash (supra) shall have to be kept in view by the Court while considering an application filed by the defendant seeking condonation of delay in filing of the written statement beyond 120 days of the receipt of the summons."*

12. The Co-ordinate Bench of this Court in Charu Agarwal (supra) after noting the conclusion in Amarendra Dhari Singh (supra), held that the principle propounded by this Court in Ram Sarup Lugani (supra) was a binding principle and held as under:

> "***28.*** *As would be apparent from the aforesaid conclusions which stand recorded in Amarendra Dhari Singh, the learned Judge appears to have taken the view that notwithstanding the usage of the expression "but not thereafter" in Rule 4, the penultimate part of that Rule, and which in the opinion of the learned Judge conferred a discretion upon the Registrar to either close the right to file a written statement or to grant further time, clearly appeared to suggest that the said power of condonation would still be available notwithstanding the maximum period as prescribed in that Rule having lapsed. While seeking to explain the decision in Ram Sarup Lugani, the learned Judge held that the difference between the language of Rule 4 and*

*5 would be crucial and decisive and thus the Registrar being empowered to extend time beyond the maximum prescribed notwithstanding the use of the expression "but not thereafter". It becomes significant to recall here that a submission was in fact addressed before the Division Bench that the stipulation of the matter being placed before the Court after the maximum period had expired in terms of Rule 5 would appear to suggest that the prescription of time in that provision was not inviolable. The said contention was soundly rejected by the Division Bench in light of the peremptory language employed in the Rule.*

***29.*** *Similarly, the decision in Harjyot Singh was sought to be explained with the learned Judge observing that the Court had failed to notice the distinction in the language employed in Rules 4 and 5 and that it had not noticed the judgment of the Court in Esha Gupta. Suffice it to note at this juncture that the decision in Esha Gupta rested principally on Order VIII and the decisions rendered in the context of that provision. However, that analogy as would be evident from the preceding parts of this decision, had been stoutly negated in Ram Sarup Lugani which had come to be delivered after the judgment in Esha Gupta. Additionally, it may be noted that the decision in Esha Gupta had in any case failed to consider the earlier decisions of the Court and which had categorically held that the principles underlying Order VIII could not have been imputed to construe the Rules of the Court.*

***30****. The learned Judge further observed that this Court while framing the Rules consciously chose not to adopt the language as employed in the Commercial Courts Act, 201515. This, according to the learned Judge, would be indicative of the intent to preserve the discretion which stands vested in the Registrar notwithstanding the maximum period of 120 days*

*having expired. Suffice it to state that those provisions do not employ the phrase "but not thereafter" at all.*

***31.*** *The Court, on a foundational plane, firstly deems it apposite to advert to the principles which govern the theory of precedents. Our jurisprudence is based upon certainty and the hierarchy of courts. The law evolves based upon judgments which enunciate the law and lay down principles which the courts are bound to follow. Judgments rendered by coordinate benches or benches of a larger composition bind a court irrespective of doubts or views that may be harboured by individual judges. The mere fact that a particular contention may not have been urged or there be an angular argument which gives birth to a doubt with respect to the correctness of a decision have never been understood or accepted to be adequate to tread a line contrary to what may have been held in a decision which binds and compels a court to follow a rule which has held the field. A court would be entitled to take a contrary view if it were sitting in a Bench of a larger composition or where it comes across a judgment which permits it to review or doubt a decision. These could be situations where a judgment doubts the correctness of a decision or where a judgment of a superior court permits a court to review and reconsider a previously decided case. A novel argument or a mere fresh review of what a statutory provision entails or should mean has never been accepted as being sufficient ground to discard a binding precedent.*

***32.*** *It must be borne in mind that the principle of binding precedent bids each Court to adhere to the principles that may have been enunciated by either Coordinate Benches or those of a larger coram. The ratio as flowing from those decisions can neither be doubted nor brushed aside merely upon a fresh interpretation or a review of the relevant provisions. A precedent would continue to bind Benches of a smaller*

*coram as well as Coordinate Benches notwithstanding a new argument being canvassed and which may appear to be attractive. It becomes equally important to observe that if a judge sitting singly were to doubt the correctness of a precedent delivered by a bench of superior strength on it being perceived that a latter decision of a Bench of coordinate strength takes a contrary view, the only recourse open to be adopted would be to refer the matter for the consideration of a larger Bench in terms of Chapter II Rule 2 of our Rules.*

***33.*** *The binding nature of verdicts was explained by a Full Bench of our Court in Deepak Kumar v. District and Sessions Judge, Delhi16 in the following terms:—*

> *"38. In this context, the Supreme Court held in Shyamaraju Hegde v. U. Venkatesha Bhat, (1988) 1 SCR 340 that:*
>
> *"The Full Bench in the impugned judgment clearly went wrong in holding that the two-Judge Bench of this Court referred to by it had brought about a total change in the position and on the basis of those two judgments. Krishnaji's case would be no more good law. The decision of a Full Bench consisting of three Judges rendered in Krishnaji's case was binding on a bench of equal strength unless that decision had directly been overruled by this Court or by necessary implication became unsustainable. Admittedly there is no overruling of Krishnaji's decision by this Court and on the analysis indicated above it cannot also be said that by necessary implication the ratio therein supported by the direct authority of this Court stood superseded. Judicial propriety warrants that decisions of this Court must be taken as wholly binding on the High Courts. That is the necessary outcome of the tier system."*

*39. In view of the above discussion, this Court holds that whatever reservations may exist and might have even been voiced in Subhash Chandra about the holding in S. Pushpa being contrary to earlier Constitution Bench rulings in Marri, Action Committee, Milind etc., it was not open to a Division Bench of this court, in Delhi and State Subordinate Selection Board v. Mukesh Kumar (supra) to say that Subhash Chandra prevailed particularly since S. Pushpa was by a larger three member Bench. It is true that the concerns and interpretation placed by Subhash Chandra flow logically from a reading of the larger Supreme Court Constitution Bench rulings. Nevertheless, since this Court is bound by the doctrine of precedent, and by virtue of Article 141 has to follow the decision in Pushpa, as it deals squarely with the issue concerning status of citizens notified as scheduled castes from a state to a Union Territory, it was not open, as it is not open to this court even today, to disregard Pushpa. The Court further notices that the correctness of Subhash Chandra has been referred for decision in the State of Uttaranchal case; the matter is therefore at large, before the Constitution Bench, which will by its judgment show the correct approach. Till then, however, Pushpa prevails."*

***34.*** *A more lucid enunciation of the legal principles governing the theory of precedents appears in the judgment of the Full Bench of the Allahabad High Court in Rana Pratap Singh v. State of Uttar Pradesh17;*

*"9. Reference may also be made to Maheshwar Prasad v. Kanahaiya Lal,' (1975) 2 SCC 232 : AIR 1975 SC 907, where it was said, "Certainty of the law, consistency of rulings and comity of*

*courts — all flowering from the same principle — converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission."*

*10. Finally, in Sundarjas Kanyalal Bhathija v. The Collector, Thane, ((1989) 3 SCC 396 : AIR 1990 SC 261) it was held "One must remember that pursuit of the law,' however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority."*

*14. The Full Bench in Pritam Kaur's case, AIR 1984 P&H 113 (supra), on its part, held, "It is equally necessary to highlight that the binding nature of precedents generally and of Full Benches in particular, is the king-pin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinions resulting in a virtual judicial anarchy. This is a self-imposed discipline which rightly is the envy of other Schools of Law." The Bench further added "The very use of the word 'binding' would indicate that it would hold the field despite the fact that the Bench obliged to follow the same may not itself be in agreement at all with the view. It is a necessary discipline of the : law that the judgments of the superior Courts and of larger Benches have to be*

*followed unhesitatingly whatever doubts one may individually entertain about their correctness. The rationale for this is plain because to seek a universal intellectual unanimity is an ideal too Utopian to achieve. Consequently, the logic and the rationale upon which the ratio of a larger Bench is rested, are not matters open for reconsideration. Negatively put, therefore, the challenge to the rationale and reasoning of a larger Bench is not a valid ground for unsettling it and seeking a re-opening and reexamination of the same thus putting the question in a flux afresh."*

*15. The reference was answered in these terms, "it would follow as a settled principle that the law specifically laid down by the Full Bench is binding upon the High Court within which it is rendered and any and every veiled doubt with regard thereto does not justify the reconsideration thereof by a larger Bench and thus put the law in a ferment afresh, The ratios of the Full Benches are and should be rested on surer foundations and are not to be blown away by every side wind. It is only within the narrowest field that a judgment of a larger Bench can be questioned for reconsideration. One of the obvious reasons is, where it is unequivocally manifest that its ratio has been impliedly overruled or whittled down by a subsequent judgment of the superior Court or a larger Bench of the same Court. Secondly, where it can be held with certainty that a co-equal Bench has laid down the law directly contrary to the same, and, thirdly, where it can be conclusively said that the judgment of the larger Bench was rendered per incuriam by altogether failing to take notice of a clear-cut statutory provision or an earlier binding precedent. It is normally within these constricted parameters that a similar Bench*

*may suggest a reconsideration of the earlier view and not otherwise. However, it is best in these matters to be neither dogmatic nor exhaustive yet the aforesaid categories are admittedly the well accepted ones in which an othewise binding precedent may be suggested for reconsideration".*

*16. On this aspect another relevant judicial pronouncement comes in Ambika Prasad v. State of U.P. ((1980) 3 SCC 719 : AIR 1980 SC 1762). There, in the context of the U.P. Imposition of Ceiling on Land Holdings Act, 1961, while dealing with the question as to when reconsideration of a judicial precedent is permissible. Krishna Iyer, J. so aptly put it "Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent".*

*17. Further, "It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority 'merely because it was badly argued, inadequately considered and fallaciously reasoned' (Salmond Jurisprudence, page 215, 11th Edition)".*

*18. Implicit, thus, in the disregard by a single Judge or a Division Bench of a binding judicial precedent of a larger Bench or seeking to doubt its correctness for reasons and in circumstances other than those spelt out in Pritam Kaur' s case AIR 1984 P&H 113 (supra) is what cannot but be treated as going counter to the discipline of law so essential to abide by, for any efficient system of law to function, if not it virtually smacking of judicial impropriety. In other words, it is only within the narrow compass of the rule as stated by the Full Bench in Pritam Kaur's case, AIR 1984*

*P&H 113 that reconsideration of a judgment of a larger Bench can be sought and as has been so expressively put there, such judgments are not "to be blown away by every side wind"."*

***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 phase "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 v. K.R. Builders Pvt. Ltd.18, HTIL Corporation B.V v. Ajay Kohli19 as well as in Print Pak Machinery Ltd. v. Jay Kay Papers Converters20. 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 aforenoted 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 Gautum 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 Gautum 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.*

***41.*** *The Court thus comes to conclude that the principles enunciated in Ram Sarup Lugani would continue to bind and govern the interpretation liable to be accorded to the Rules. The Court has firstly found that there exists no distinction between Rules 4 and 5 which may be countenanced in law as justifying Rule 4 being interpreted or understood differently. In any case*

> *the binding decisions rendered on the subject constrain the Court to desist from treading down this path. The Court, bound by the rule of precedent, is of the considered opinion that such a review or a reconsideration would be impermissible in law. Since the Court has found that both coordinate Bench as well as Benches of a larger coram have conclusively settled all issues that stand raised, no reference is also warranted."*

13. In view of the categorical position which is discernible from the abovementioned Judgments, it is clear that there is no power vested with the Courts to condone the delay in filing the written statement beyond the maximum period prescribed in Chapter VII of the Delhi High Court (Original Side) Rules, 2018.

14. The appeal is, therefore, dismissed.

**I.A 34767/2024**

1. This application under Order VII Rule 11 of CPC has been filed on behalf of the Defendants seeking rejection of the Plaint primarily on the ground that the Plaint does not disclose a proper cause of action. Pertinently, a perusal of the Application further discloses that the Defendants have also challenged the institution of the Suit before this Court, contending that this Court does not have the territorial jurisdiction to entertain the present Suit.

2. The present Suit has been filed by the Plaintiff with the following prayers:

> *"(a) Pass a decree of permanent injunction restraining the defendants, their agents, servants, employees, officers, associates, representatives, attorneys and all acting for and on its behalf from writing, publishing, circulating, speaking or making any demeaning remark/material against the Plaintiff and circulating or distributing the defamatory communications dated*

*10.7.23, 25.7.23 or any other communications to tarnish the image and reputation of the Plaintiff;*

*(b) Pass a decree of declaration declaring that the communications dated 10.7.23, 25.7.23 are per-se defamatory and have been issued with malafide intent by the Defendants.*

*(c) Pass an order for damages of Rs. 3,00,00,000/- (Rupees Three Crores Only), or such further amount as may be ascertained by this Hon'ble Court for causing mental stress, agony, torture and cruelty to the Plaintiff;*

*(d) Pass a Decree for costs in the proceedings;*
*(e) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;*

3. It is the case of the Defendants that the Company i.e., Liberty Shoes Limited, has its offices in Karnal and Gurugram which are situated in the State of Haryana. In the Plaint, it is stated that during the COVID-19 period, the Plaintiff was compelled to create a home office at 3, Purnima Farms, Chandan Hola, Band Road, Chhatarpur, Delhi-74 and the employees of the Company used to report to him at such address and, therefore, this Court has the jurisdiction to entertain the present Suit. The Defendants' case is that this averment itself is enough to come to a conclusion that the Company has not set up any office in Delhi and the Plaintiff had himself set up this office for his own convenience, which is actually the Plaintiff's residential house.

4. It is further stated that a reading of the Plaint also indicates that the alleged defamatory statements which are in the form of emails were only sent to limited number of people and all of them are not resident of Delhi. It is stated that the circulation of the said emails is outside the territorial

jurisdiction of Delhi and, therefore, this Court will not have the necessary territorial jurisdiction to entertain the present Suit.

5. *Per contra*, learned Counsel appearing for the Plaintiff draws the attention of this Court to the Order dated 06.12.2023 passed by this Court to contend that this issue was raised before this Court by the Defendants on 06.12.2023 and despite the said objection, the Plaint was registered as a Suit by this Court and, therefore, now it is not open for the Defendants to raise this objection again in the present application.

6. Heard learned Counsel appearing for the Parties and perused the material on record.

7. The Plaint was registered as a Suit *vide* Order dated 06.12.2023 passed by this Court. Paragraph No.1 of the said Order dated 06.12.2023 reads as under:

> *"1. Pursuant to the last order, the plaintiff has filed an additional affidavit wherein the plaintiff has sought to explain that a Camp Office of the Company namely 'Liberty Shoes Limited' of which the defendants are the Directors is being run from his residence at Chattarpur, Delhi for which the expenses are being borne by the Company i.e., Liberty Shoes Limited. Learned senior counsel for the plaintiff, therefore, contends that the defamatory communications issued by the defendants based on the information purportedly received by them from the Company M/s. 'Liberty Shoes Limited' has not only defamed the defendants but has also caused great prejudice to the plaintiff who is operating from the said Camp Office. He, therefore, submits that this Court has the necessary territorial jurisdiction to entertain the suit."*

8. In any event, it is necessary to reproduce Paragraph Nos.22 to 28 of the Plaint which are as under:

*"21. That it is clear from the above that the Defendants intentionally made and circulated malicious, fabricated, demeaning and wrong allegations to harm the business as well as tarnish the personal reputation of the Plaintiff in the eyes of the employees, management, business associates and investors of the company, the Defendants know fully well that the Plaintiff has high reputation in the eyes of persons to whom the defamatory communications have been circulated, that most of the addressees of the defamatory communications are persons who report to the Plaintiff, that it has become neigh impossible for the Plaintiff to work.*

*22. That in the year 2020, serious COVID-19 pandemic hit the world and due to repeated lockdowns most of the businesses faced serious threats of closure, the world economies were also hit, the supply chains were disrupted, that in these bad times as a CEO, the Plaintiff took a challenge and created a strategy and cost cutting across the group but maintained a human face of the organization. The strategy was to survive, sustain and grow. The repeated waves of COVID and closure of business center where the Gurugram office was situated from where the Plaintiff usually worked, compelled the Plaintiff to create a home office 3, Purnima Farm, Chandan Hola, Bandh Road, Chattarpur, Delhi-74. The Plaintiff addressed employees by webinars, inspirational talks from his home office.*

*23.That the Plaintiff still maintains a home office at 3, Pumima Farm, Chandan Hola, Bandh Road, Chattarpur, Delhi-74, that the employees of M/s Liberty Shoes Limited report to the Plaintiff in the said home office from where the Plaintiff is largely working.*

*24. That the Defendants have ensured that the defamatory communications are well circulated at 3,*

*Purnima Farm, Chandan Hola, Bandh Road, Chattarpur, Delhi-74 and at other office premises of M/s Libe1ty Shoes Limited. That clearly the defamatory communications are not from M/s Liberty Shoes Limited as the Board of M/s Liberty Shoes Limited never authorized the said defamatory communications. That any show cause notice or any cessation of functioning of the Plaintiff could only be authorized by the Board of M/s Liberty Shoes Limited, the Plaintiff is also a member of Board of M/s Liberty Shoes Limited, the said communication was never placed before the Board or in any Agenda. That the defamatory communication is clearly unauthorized and is purely malicious, that the Plaintiff had no idea at all that the Defendants are planning to plant the defamatory communications. That the Defendants are lower in rank than the Plaintiff and clearly could not have circulated the said defamatory communications against the Plaintiff. That the said defamatory communications purport to immediately remove Plaintiff from his post and powers, clearly, the said defamatory communications are unlawful and cannot operate to divest the Plaintiff of its powers. The said defamatory communications are per se illegal and beyond powers of Defendants. That the action of Defendants have caused immense mental, agony, cruelty and torture to the Plaintiff. That the conduct of the Defendants is causing and has caused grave mental stress and cruelty to the Plaintiff and as such, has even affected his daily routine, the Plaintiff is in state of shock. That the conduct of the Defendants has caused and continues to cause mental cruelty to the Plaintiff.*

*25. That the defamatory communications was received by the Plaintiff at his home office situated at 3, Purnima Farm, Chandan Hola, Bandh Road, Chattarpur, Delhi-74. That post the defamatory communication, the employees who report to the plaintiff have been hesitant to report to the Plaintiff,*

*the defamatory email certainly has tarnished the image of the Plaintiff and has also resulted into confusion. That the Plaintiff has been receiving in his home office various calls from vendors, business associates, staff, channel partners, overseas customers, extended family, overseas customers, friends etc. all this is causing huge mental trauma, sleepless nights and agony to the Plaintiff.*

*26.That all the addresses in the said defamatory communications report to plaintiff, the communications has been circulated to all Heads and high ranking officers of M/s Liberty Shoes Limited. The communication has reached the office staff and the designations to the persons to whom it is addressed, that apart from the designations named in the defamatory communications, the named individual, Mr. Hemant Mohanis head institutional sale and marketing at Gharonda, Mr. Ajay Dhingra is Financial Institutions Head and Consultant at Gharonda, Mr. Munish is CFO and Company Secretary as Gurugram, Mr. Tarunjay Bharti-is CS based at Gurugram, Mr. Rajeev Sharma-Company Secretary is based at Gurugram, Mr.Raman Bansal-Director (not a board member) is Domestic Sales and Marketing Head, Mr. Anupam- Director (not a board member) is Retail Division head, Mr. Ashok Kumar is Legal Advisor and Executive on Board at Karnal.*

*27. That the defamatory communications are likely to spread further and cause immense and immeasurable damage, the defamatory communication is liable to be stopped from further circulation and declared invalid instantly. That the Defendants by their malafide actions cannot jeopardise the interests of M/s Liberty Shoes Limited, the Plaintiff has been CEO since 2004, there is no board resolution authorizing this defamatory communication, this defamatory communications if spread further, will jeopardize*

*interests of shareholders, public at large who have invested in M/s Liberty Shoes Limited. Public at large who has invested in its shares may loose lacs and lacs of money instantly, the market capitalization of M/s Liberty Shoes Limited may also be eroded, the conduct of the Defendants is callous, further, if the said defamatory contents reach media, the share prices may fall, various vendors/buyers may cancel their orders, there are various business dealings which may get hampered, further, it may lead to further disparagement of Plaintiff and M/s Liberty Shoes Limited. The effect would be catastrophic.*

*28. That the Defendant were well aware that the Plaintiff was overseas from 10.7.2023, thus deliberately the defamatory communication was addressed on 10.7.23, while the Plaintiff was away, that the Plaintiff received the communication effectively on 21.7.23 as only then the plaintiff was able to read the communication in detail. That the Plaintiff returned from overseas on 16.7.23, but had to be out of station and out of office from 17th to 18th July, 23. That the Plaintiff did some work on 19.7.23, however, the defamatory communication dated 10.7.23 was practically received at the desk of Plaintiff on 21.7.23 in his home office at 3, Pumima Farm, Chandan Hola, Bandh Road, Chattarpur, Delhi-74. That the Plaintiff immediately wrote on 21.7.23 that the contents of this communication are defamatory and malicious. That the defamatory communication dated 10.7.23, effectively received on 21.7.23 caused a lot of mental trauma to the Plaintiff. The defamatory communication dated 10.7.23 made Plaintiff suffer a deep mental shock, it must have certainly effected his health. The Plaintiff somehow has kept his work alive, however, the shock has severely impeded his working. That the defamatory communication dated 25.7.23 was served by way of email to various persons in M/s Liberty Shoes Limited, all Heads of Departments, that*

> *both the defamatory communications have travelled to vendors, business associates etc."*

9. A perusal of the abovementioned paragraphs of the Plaint shows that it is the case of the Plaintiff that the Defendants have ensured that defamatory communications are circulated at the residence of the Plaintiff at Delhi. That apart, it is further averred in the Plaint that the defamatory communications have been circulated to all the Heads and higher rank officials of the Company. It is well settled that in case of defamation, wherever the office of the Company, in which the Plaintiff and the Defendants are Directors, is situated, a cause of action will arise. It is also well settled that while seeing the cause of action, this Court has also to see where the impact of the statements of the Defendants are felt. Reference in this regard is made to judgments delivered by Coordinate Benches of this Court in Frank Finn Management Consultants v. Subhash Motwani, **2008 SCC OnLine Del 1049** and Indian Potash Ltd. v. Media Contents & Communication Services (India) (P) Ltd., **2009 SCC OnLine Del 4410**.

10. It is equally well settled that while considering the application filed under Order VII Rule 11 of CPC, only the averments in the Plaint and the documents have to be seen. The Apex Court in Popat and Kotecha Property v. State Bank of India Staff Assn., **(2005) 7 SCC 510,** has held as under:

> *18. In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*
>
> *19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is*

*adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.*

*20. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised."*

11. Applying the aforesaid law laid down by the Apex Court as well as by Coordinate Benches of this Court to the facts of the present case and in view of the specific averments that emails have been well circulated, including in Delhi, this Court will have the territorial jurisdiction. The Plaintiff has made out the case for territorial jurisdiction and it cannot be said that no cause of action has arisen in Delhi.

12. Though the learned Senior Counsel for the Defendants has drawn the attention of this Court to Paragraph No.36 of the Plaint to contend that the

defamatory statements have been circulated to a very few people who do not reside in Delhi, however, as stated above, this will not be sufficient to reject the Plaint either on the ground of territorial jurisdiction or under Order VII Rule 1 of CPC.

13. Accordingly, the Application is dismissed.

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List on 17.03.2026 for framing of issues.

**SUBRAMONIUM PRASAD, J**

**JANUARY 15, 2026**
*S. Zakir*