



\$~14

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

+ **CS(OS) 53/2021 & I.A. 36039-42/2024**

INDUPAL KAUR SEHGAL

.....Plaintiff

Through: Mr. M.S. Bammi, Ms. Lovee Tyagi,
Ms. Aarushi Aggarwal and Mr. Yash
Agarwal, Advs.

versus

DR. DAVINDER PAL SINGH REKHI & ORS.Defendants

Through: Mr. Sachin Chopra, Mr. Kamal
Bansal, Ms. Astha Gupta and Ms.
Monika Verma, Advs. for D-1 & D-2.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

21.08.2024

%

O.A. 128/2024 (by plaintiff against order dated 24.07.2024)

1. The present O.A. has been filed by the plaintiff against the order dated 24.07.2024 passed by the learned Joint Registrar whereby the affidavit of admission/denial of documents filed by the plaintiff was directed to be struck off from the record on the ground that the same has not been filed within the time period prescribed under the Chapter VII Rule 7 of the Delhi High Court (Original Side) Rules, 2018.
2. The learned counsel for the defendants appearing on advance service at the outset invites the attention of the Court to the decision of a co-ordinate Bench of this Court in *“Odeon Builders Pvt. Ltd. vs. NBCC (India) Limited; 2019 SCC OnLine Del 10795”* to contend that the period prescribed under Chapter VII Rule 7 of the Rules cannot be condoned



beyond a period of 45 days. The relevant paragraphs 15 and 17 of the said judgment on which reliance has been placed reads thus:-

“15. So it must be held by including the words “not thereafter” in Rule 5 of Chapter II of Rules, the rule making authority intended to exclude grant of further time for filing the replication and affidavit of admission/denial of documents after the expiry of period of 45 days. The plea of Mr. Tandon was that in view of Rule 14 and 16 of Chapter I, the court has discretion to grant further time over and above what has been prescribed in Rule 5 of Chapter VII of the Rules, I am afraid such a plea is not acceptable. Firstly, Rule 14 and 16 cannot be read in any manner to make the words “not thereafter” in Rule 5 of Chapter VII otiose. In any case, it is a settled position of law in terms of the Judgment of the Supreme Court in Padam Sen v. State of Uttar Pradesh 1961 ALT 84 (SC) that the inherent power of the court is in addition to the power specifically conferred on the court by the Code (Rules in this case). It was held by the Supreme Court that the inherent powers are complementary to those powers and the court held that it must be held that the Court is free to exercise them for the purpose mentioned in section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the code or against the intentions of the Legislature. In other words, it is well-recognized that inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the code.

xxxx

xxxx

xxxx

xxxx

17. So, it follows, the interpretation of the Rule 5 of Chapter VII in the aforesaid manner is justified, more so, when in the matter of filing a written statement under Order VIII Rule 1 CPC wherein a new proviso was added by Commercial Courts, Commercial Division and Commercial Appellate Tribunal of High Courts Act, 2015 which came into force on October 23, 2015, to mean that no further time shall be granted beyond a period of 120 days. (Ref : - SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. (2019) 4 Scale 574). No doubt, the proviso to Order VIII Rule 1 CPC is different



from the words used in Rule 5 of Chapter VII of the Delhi High Court (Original Side) Rules, but to have an uniformity with regard to the pleading of the parties, it must be held that 30 + 15 days for filing the replication and affidavit of admission/denial of documents is mandatory. Otherwise the position that emerges is, for the purpose of filing written statement/affidavit of admission and denial of documents by the defendant, 120 days are mandatory and not 45 days for the plaintiff to file replication. The rule must be given a purposive interpretation. Even the Coordinate Bench of this court in Unilin Beheer B.V. (supra) has also in the context of, when affidavit of admission/denial of documents is not filed along with the written statement, on an issue whether the written statement can be taken on record, has in para 28 referred to the spirit behind overhauling of the Delhi High Court Original Side Rules, 1967 and enactment of 2018 Rules by stating as under:

“28. Such interpretation is also found to be in consonance with the spirit behind overhauling of the Delhi High Court (Original Side) Rules, 1967 and enactment of the 2018 Rules. With the experience of over fifty years of working of the 1967 Rules, attempt was made in the 2018 Rules to do away with the bottlenecks in the proceedings in the suits on the Original Side of this Court. One of such bottlenecks was the stage of admission/denial of documents, at which the suits remained pending, in large number of cases, for years and thereafter also not serving any purpose of expediting trial, with vague denials being made, putting the opposite party to proof of documents at the cost of consequent delays. Order XII Rule 2A of the CPC, as existed since amendment thereof of 1976, though provided that a document, which a party is called upon to admit, if not denied specifically or by necessary implication or stated to be not not admitted in the pleading of that party or in reply to notice to admit, shall be deemed to be admitted but also provided that where a party unreasonably neglected or refuses to admit a document after service of notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation. The same in working, led to, as aforesaid, a practice of generally denying everything in pleadings, implicitly also documents and taking advantage of



resultant delays in proof of documents. This resulted in suits, most of evidence wherein was documentary, also being not decided expeditiously owing to delays in proof of documents. To eliminate such malady, in the new Rules provisions aforesaid were incorporated, making affidavit of admission/denial of documents mandatory and providing stringent consequences of non-filing of affidavit of admission/denial of documents to prevent a party from abusing the process of Courts, to its own advantage and to the prejudice of opposite parties. The Scheme in entirety, as set out hereinabove, shows that the same consequences as for defendant, also follow for plaintiff for non-filing of affidavit of admission/denial of defendant's documents”

(emphasis supplied)

3. The learned counsel for the plaintiff prays for time to examine the said judgment and to make his submissions on the next date.
4. At request, list on 23.09.2024.

VIKAS MAHAJAN, J

AUGUST 21, 2024/dss