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

+ **CS(COMM) 645/2022 & I.A. 15236/2022 I.A. 16428/2023**

SHIVAM CORPORATION INDIA

.....Plaintiff

Through: Ms. Saumya Jain and Ms. Himanshul
Tyagi, Advs.

versus

GEM SALES CORPORATION

.....Defendant

Through: Mr. Akash Jandial, Advocate

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

02.04.2025

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I.A. 16428/2023

1. This application under Chapter VII, Rule 5 of Delhi High Court (Original Side) Rules, 2018, has been filed by the plaintiff for bringing on record the replication and affidavit of admission/denial of documents filed by plaintiff *qua* the documents filed by the defendant.
2. It is stated in the application that the replication has been filed on 05.07.2023 after duly serving the defendant.
3. It is averred that the replication has been filed with a delay of 14 days beyond the 30 days granted by the Court and is therefore within the outer limit of 45 days prescribed under Chapter VII Rule 5 of Delhi High Court (Original Side) Rules, 2018.
4. In reply, learned counsel for the defendant/non-applicant states that Petitioner had supplied the written statement to defendant on 30.11.2022. He has handed over a copy of the email in support of this submission. He also



relies upon the case history of the suit proceedings available on the official website of Delhi High Court to contend that the written statement filed vide e-diary no. 1967429/2022 was brought on record on 20.12.2022.

4.1. He further submits that order dated 04.05.2023 passed by the learned Joint Registrar (J) also notes that the written statement stands filed. He therefore submits that the time for filing replication for the plaintiff has to be reckoned from 30.11.2022. And, *lastly* even if it is reckoned from 04.05.2023, the period of 45 days for filing the replication, expired on 01.07.2023.

4.2. He states that in pursuance to direction issued by learned Joint Registrar (J) on 04.05.2023, the plaintiff was re-served with the written statement on 20.05.2023. He states that plaintiff cannot rely upon the re-service of the written statement for the purpose of reckoning the period of limitation.

5. Learned counsel for the plaintiff states that since she has been recently engaged in the matter, she is not in a position to dispute the service of the written statement on 30.11.2022 upon the plaintiff.

6. This Court has considered the submissions of the parties.

7. In view of the facts noted above and the email dated 30.11.2022, it is apparent that the replication (filed on 05.07.2023) has been filed beyond the statutory period of limitation i.e., 45 days.

8. Rule 5 of Chapter VII of Delhi High Court (Original Side) Rules, 2018 specifically provides that the replication shall be filed within 30 days of the receipt of the written statement. Further time limit can be extended by 15 days if the plaintiff was prevented by sufficient cause, exceptional and unavoidable reasons in filing the replication within 30 days.



9. This Court in **Ram Swarup Lugani & Another v. Nirmal Lugani & Others**¹ which has confirmed by the Apex Court in SLP No. 15142/2020 has inter alia held as under: -

“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 peremptory 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

¹ 2020 SCC OnLine Del 1353



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).”

(Emphasis supplied)

10. In view of the aforesaid judgment of the Division Bench of this Court the relief of condonation of delay in filing of the replication as sought in the present application is barred in law and therefore, cannot be granted. Moreover, the plaintiff has failed to disclose the fact of service of written statement on 30.11.2022 in the application.

11. It is however clarified that the affidavit of admission/denial of documents, filed by plaintiff *qua* the documents filed by defendant are taken on record in view of the judgment of the Co-ordinate Bench of this Court in **Louis Dreyfus Company India Pvt. Ltd. v. Nutrilite Agro Products Pvt. Ltd.**².

12. It is further clarified that any plea raised in the replication, which is in consonance with the stand already taken by the plaintiff in the plaint will be

² 2024 SCC OnLine Del 278



permissible to be raised by way of evidence affidavit at the time of leading evidence in this matter.

13. The defendant is directed to file a copy of the email dated 30.11.2022 and the case history relied upon under the cover of an index within one (1) week.

14. With the aforesaid directions, this application stands disposed of.

I.A. 15236/2022

15. This is an application under Section 151 of the Code of Civil Procedure, 1908, filed on behalf of the plaintiff, thereby seeking condonation of delay of 77 days in re-filing the suit.

16. For the reason stated in the application, the delay is condoned subject to the plaintiff paying costs of Rs. 10,000/- to the counsel for the defendant within two (2) weeks.

17. Accordingly, the application is allowed.

CS(COMM) 645/2022

18. The plaintiff is directed to file Joint Documents Schedule within four (4) weeks.

19. List before the learned Joint Registrar (J) for recording admission/denial of documents and marking of exhibits on **08.05.2025**.

20. List before this Court for framing of issues on **29.08.2025**.

MANMEET PRITAM SINGH ARORA, J

APRIL 2, 2025/hp/MG

Click here to check corrigendum, if any