

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: August 06, 2020

+ CS(OS) 149/2018 & IAs. 2905/2019 and 2906/2019

SH. GAUTAM GAMBHIRPlaintiff

Through: Mr.Paritosh Budhiraja, Mr. Fanish Jain, Ms. Surabhi Maheshwari, Mr.Akash Kumar Singh, Mr.Anshula Gupta, Advocates

versus

M/S JAI AMBAY TRADERS & ORSDefendants

Through: Mr. Balwant Singh. Advocate for D3&D4.
Mr.Nishant Awana and Mr.Jalaj Pandey, Advocates for D2&D6.

AND

+ CS(OS) 182/2019 & IAs. 4760/2019, 4761/2019, 4762/2019, 9547/2019, 9710/2019, 9764/2019 and OA. 122/2019

SH. RAM SARUP LUGANI & ANR.....Plaintiffs

Through: Mr.Tanmaya Mehta, Mr.Aditya Garg and Mr.Raghav Wadhwa, Advocates.

versus

NIRMAL LUGANI & ORSDefendants

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr.Gurpreet Singh, Mr.Achal Gupta and Ms.Neha Aggarwal, Advocates

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

I.A. 2906/2019 in CS(OS) 149/2018 & OA 22/2019 in CS(OS) 182/2019

1. By this order, I shall decide an application being I.A. 2906/2018 in CS(OS) 149/2018 and Chamber Appeal being OA 122/2019 in CS(OS) 182/2019. I.A. 2906/2019 has been filed by defendant Nos. 2, 3, 4 and 6 in the said suit, whereby defendant Nos. 2, 3 and 6 have sought condonation of 131 days delay and defendant No.4 has sought condonation of 15 days delay in filing the written statement. Similarly, the Chamber Appeal being OA 122/2019 has been filed by the plaintiffs challenging the order of the learned Joint Registrar dated September 30, 2019 whereby the learned Joint Registrar has closed the right of the plaintiffs to file replication to the written statement filed by the defendants in the said suit.

FACTS of I.A. 2906/2019 in CS(OS) 149/2018:-

2. The suit has been filed by the plaintiff against the defendants for recovery of Rs.2,98,70,000/-. Summons were issued to the defendants on April 11, 2018, returnable on July 11, 2018. It appears that the plaintiff has filed an application for placing on record amended memo of parties and the said application was listed before the learned Joint Registrar on May 17, 2018 when the learned Joint Registrar directed issuance of

summons to all the six defendants and made it returnable on July 11, 2018, the date already fixed. On July 11, 2018 one Mr. Mayank Bamniyal, Advocate appeared for the defendants and sought time to file vakalatnama. The learned Joint Registrar has also directed filing of the written statement within the statutory period with a direction to supply advance copy to the plaintiff and adjourned the matter to September 07, 2019.

3. On September 07, 2019 Mr. Bamniyal stated that he appears for defendant Nos. 1, 2, 3 and 6 only and does not represent defendant Nos. 4 and 5. He sought more time for filing the written statement as per law. Accordingly, fresh notices were issued to defendant Nos. 4 and 5, returnable on October 30, 2018. On October 30, 2018, no written statement was filed by the defendant Nos. 1, 2, 3 and 6. The learned Joint Registrar noting the fact that the prescribed period for filing the written statement has already expired, had observed that law shall take its own course. In the meantime, Mr. Rushab Aggarwal, Advocate accepted summons for defendant Nos. 4 and 5, who were still unserved and stated that he shall take appropriate steps for filing the written statement. The matter was posted for December 19, 2018. On December 19, 2018, the learned Joint Registrar has noted the fact that defendant Nos. 1 to 4 and 6 have filed an application for condonation of delay. Be that as it may, fresh summons were issued to the defendant No. 5. The matter was posted on February 14, 2019. On February 14, 2019, the learned Joint Registrar has again reiterated that the written statement on behalf of defendant Nos. 1 to 4 and 6 has not been filed within the

statutory period. The defendant No.5 was also proceeded *ex-parte*.

4. The present application has been filed with the following averments: -

“3. That the counsel for the defendant Nos. 2, 3, 4 and 6 were engaged in the captioned matter on 14.12.2018 and filed their written statement on 18.12.2018.

6. At the time of filing the written statement there is a delay of 131 days for the defendant Nos. 2,3 and 6 as they were served the summons on 10.07.2018. Further, at the time of filing the written statement on behalf of the defendant No.4, there is an inordinate delay of 15 days in filing the written statement as summons were served upon her on 04.11.2018 Further, a proxy counsel had appeared on behalf of the defendants on 30.10.2018 and sought time to file the written statement.

7. That initially once the suit was filed on behalf of the plaintiff, the defendant Nos.2,3,4 and 6 were in the process of coordinating with each other and were trying to get in touch with the defendant No.6. The defendant No.6 being a senior citizen was not keeping well and therefore it took time to engage a counsel and the their written statement. The same lead to an inordinate delay of 131 days in filing the written statement on behalf of the defendant Nos. 2, 3 and 6 and a delay of 15 days in filing the written statement on behalf of the defendant No.4

8. That due to the bonafide reasons stated herein above,

the written statement could not be refilled within prescribed limit of 30 days. It is submitted that the delay stated above was unintentional and was not deliberate and therefore, the same may be condoned in the interest of justice.”

5. A reply has been filed by the plaintiff to the application filed by the defendant Nos. 2, 3, 4 and 6, wherein it has been stated that admittedly the written statement has been filed beyond the period of 120 days from the date of service of the summons and as such, the same cannot be permitted to be taken on record. A reference has been made to Rule 2(i) and Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018 (Rules of 2018, in short) in support of this contention. In substance, it is the plea that the Rules of 2018 shall prevail over the Code and the Rules clearly stipulate that the written statement needs to be filed within 120 days and not thereafter. In other words, the said period being mandatory, having not filed the written statement within the said period, the right of the defendants to file written statement was rightly treated to have been extinguished.

Facts of OA 122/2019 in CS(OS) 182/2019: -

6. The suit has been filed by the plaintiffs, wherein the written statement has been filed by the defendants on or before July 03, 2019. This is because when the matter was listed before the Court on July 23, 2019, the learned counsel for the plaintiffs has stated that he has received a copy of the written statement. Time of four weeks was granted to file replication along with the affidavit of admission / denial of documents and the matter was

posted on September 30, 2019. On September 30, 2019, the learned Joint Registrar, noting the fact that replication has not been filed within the time granted and no ground is made out for further extension, had closed the right of the plaintiffs to file replication. It is this order, which is under challenge in this Chamber Appeal. The relevant averments made in the appeal challenging the order of the learned Joint Registrar are in paras 3, 4, 5, 6, 7 and 8 which are reproduced as under: -

“3. That the suit was listed for hearing before the Hon'ble Court on 23.07.2019, when the defendants entered appearance. The Hon'ble Court was pleased to grant four weeks time to the plaintiffs for filing their replication to the written statement and their affidavit of admission denial of documents. The case was, accordingly, ordered to be listed before the Ld. Joint Registrar for completion of pleadings on 30.09.2019.

4. That the defendants have filed a written statement running into more than 125 pages. The said written statement contains 60 preliminary objections. The defendants have also filed equally lengthy replies to applications preferred by the plaintiffs along with their suit. Further, the defendants have also filed documents that run into more than 500 pages. The defendants have raised false and baseless contentions. It is pertinent that each of the contentions & averments are responded by plaintiffs, for an effective adjudication. A detailed and careful scrutiny had to be carried out in order to aptly

reply to the written statement. The plaintiffs and the counsel had to revisit all the documents in order to answer the averments made by the defendants. Also, additional research of correspondence had to be carried out for effective reply. The said exercise has taken the considerable time and it is for this reason that the replication as well as the affidavit of admission denial of documents could not be filed within the time granted by the Hon'ble Court.

5. That the defendants have collectively filed various / different documents for different purposes under a single head / entry in index. The documents are unrelated to each other and should have been bifurcated and filed separately under different heads of index. Combining the documents under a single head has created confusion and has made the exercise of preparing an affidavit of admission / denial of documents an extremely complex task.

6. That it is also pertinent to state herein that the Plaintiff No. 1 is of 93 years of age. Though he is mentally fit and mobile, however, there is a constraint on his free movement. Also, he cannot sit for long conferences, due to medical reasons. Plaintiff no. 2 is a practicing Chartered Accountant. Plaintiff no. 2 was occupied with his professional duties towards his clients as from July 2019, he has been preparing balance sheets of his clients and filing returns. Since time for preparation of the

replication coincided with the time of filing of annual returns, the plaintiff no. 2 could not make himself easily available to discuss the issues and assist in drafting of the replication. There have been to and fro movement of pages of draft replication between plaintiff no. 2 and his counsel.

7. That on 30.09.2019, the matter came up for hearing before the Ld. Joint Registrar. The counsel representing the plaintiffs sought 15 days time to file the replication and other replies, along with the affidavit of admission denial of documents. The Ld. Joint Registrar, however, without appreciating the peculiar facts of the present case and the difficulties faced by the plaintiffs in responding to the Written Statement, closed the right the plaintiffs to file a replication.

8. That the replication and the affidavit of admission denial of documents could not be filed within the time stipulated by the Hon'ble Court because of the reasons stated hereinabove. It is due to the aforesaid facts and circumstances that the plaintiffs are filing their replication and the affidavit of admission denial of documents now, albeit with a delay of 60 days. The replication is an important part of pleading, as it controverts and refutes, each allegation of defendants and also demonstrates the malafides on defendants' part.”

SUBMISSIONS:-

I.A. 2906/2019

7. It is the submissions of the learned counsels appearing for the applicants / defendant Nos. 2, 3, 4 and 6 that in the filing of the written statement on behalf of defendant Nos. 2, 3 and 6 there is a delay of 131 days as they were served summons on July 10, 2018 and that there is a delay of 15 days in filing the written statement on behalf of defendant no.4 as summons were served only on November 4, 2018.

8. It is their submission that in terms Rules of 2018 the limitation period of 120 days prescribed for filing of the written statement in an ordinary suit is not mandatory, but the court on showing a sufficient cause can condone the delay. They stated, sufficient cause has been shown by the applicants / defendants in the application for this court to exercise the discretion in their favour and condone the delay and take the written statements on record.

9. On the other hand, Mr. Paritosh Budhiraja, learned counsel appearing for the non-applicant / plaintiff would submit that delay beyond 120 days in filing the written statement cannot be condoned by this Court in view of Rule 4 of Chapter-VII of the Rules of 2018 which clearly provides that in case, written statement is not filed within 30 days, the period for filing the same can be extended for a further period not exceeding 90 days, but not thereafter. Therefore, prescribing the maximum period of 120 days for filing the written statement is with a purpose. He stated that there is difference in the Rules of 2018 and the

rovision under Order VIII Rule 1 of Code of Civil Procedure, 1908 ('CPC', in short) inasmuch as the order VIII Rule 1 CPC does not use the phrase '*but not thereafter*' as mentioned in the Rules of 2018. According to him, the question which arises for consideration is whether, for the purposes of condonation of delay in filing the written statement, the CPC shall prevail over the Rules of 2018. In this regard, he submitted that Section 7 of the Delhi High Court Act, 1966 ('Delhi High Court Act', in short) empowers this court to make its own rules with respect to practice and procedure for exercise of its ordinary original civil jurisdiction. Further, Section 129 of the CPC also empowers the High Courts to make rules to regulate procedures of its original civil jurisdiction as it deems fit. He submitted that Section 129 of the CPC even recognizes and upholds the validity of the already existing rules which were in force at the time of commencement of the Code. That apart, it was his submission that the Supreme Court in the case of *Iridium India Telecom Ltd. v. Motorola Inc.*, AIR 2005 SC 514, has considered various provisions of law and numerous judgments and traced the history of the charter establishing High Courts in the country and after exhaustive consideration of various aspects has *inter alia* held that the rules framed by the High Courts would prevail over the provisions of the Code, even if the said Rules are inconsistent with the Code. Similarly, he also referred to *Printpak Machinery Limited v. M/s. Jay Kaay Paper Congesters*, AIR 1979 Delhi 217, wherein the Full Bench of this Court has held that non-obstante clause in Section 129 of the CPC has left

untouched the Original Side Rules whenever framed and thus categorically held in the event of inconsistency, Original Side Rules shall prevail over the CPC. He also referred to the judgment of this court in *Akash Gupta v. Frankfinn Institute of Air Hostesses*, 127 2006 DLT 128, wherein the Division Bench of this court relying upon the aforesaid judgments came to a conclusion that the Delhi High Court (Original Side) Rules, 1967 ('Old Rules', in short) shall prevail over the CPC. That apart, it was his submission that the provisions of Rules of 2018 are clear that the said rules have been made by this Court with respect to practice and procedure relating to its ordinary civil jurisdiction and are applicable to all kinds of proceedings on the original side of this Court irrespective of whether it is an ordinary suit or a commercial suit. It does not make any distinction between the commercial suits or ordinary suits. So, according to him, the only conclusion that can be drawn is that the Rules of 2018 shall prevail over the Code in the event of inconsistency between the two, irrespective of the nature of proceedings on the original side of this Court. Therefore, for the purpose of filing of the written statement, it is Rule 4 of Chapter VII of the Rules of 2018, which would be applicable and not Order VIII Rule 1 of CPC. Therefore, it was his submission, plea of the defendants that the provision under Order VIII Rule 1 CPC would govern the filing of the written statement is untenable.

10. In so far as the plea of the learned counsel for the applicants / defendants as to whether the delay beyond the period of 120 days can be condoned, it was his submission that although

Order VIII Rule 1 CPC provides that time for filing the written statement can be extended beyond the period of 30 days by a further period not later than 90 days from the date of service of summons, there is no presence of the phrase '*but not thereafter*'. Whereas, Rule 4 of Chapter VII of Rules of 2018 specifically uses the phrase '*but not thereafter*'. That apart, he stated that Rule 4 of Chapter VII of the Rules of 2018 in so far as it relates to the permissible time limit for filing the written statement the same is analogous to proviso to Section 34 (3) of the Arbitration and Conciliation Act, 1996 ('Act of 1996', in short) inasmuch as the said *proviso* also specifically creates a bar in filing an application under Section 34 of the Act of 1996 beyond the period prescribed in the said provision. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Union of India v. Popular Construction, 2001 (8) SCC 470***. That apart, he has also relied upon the judgment of the Supreme Court in ***P. Radha Bai and Ors. v. P. Ashok Kumar and Anr. 2018 (5) Arb.LR 2004***. He also relied upon a recent pronouncement of this Court in the case of ***Odeon Builders Pvt. Ltd. v. NBCC (India) Ltd. in CS(Comm). 1261/2018*** decided on October 31, 2019, wherein this Court by considering various judgments came to a conclusion that period prescribed in Rule 5 of Chapter VII of the Rules of 2018 for filing the replication is mandatory in nature. That apart, he submitted that the phrase '*but not thereafter*' is couched in negative terms and is mandatory in nature and thus the time for filing the written statement cannot be extended beyond the period prescribed under

Rule 4 of Chapter VII of the Rules of 2018.

11. In so far Rules 14 and 16 of Chapter I of the Rules of 2018 are concerned, it was his submission that same cannot be read in a manner to render the words '*but not thereafter*' in Rule 4 of Chapter VII otiose. In this regard, he has relied upon the judgments of the Supreme Court in *Padam Sen and Ors. v. State of Uttar Pradesh, AIR 1961 SC 218; Manohar Lal Chopra v. Rai Bahaadur Rao Raja Seth Hiralal, AIR 1962 SC 57; Vinod Seth v. Devinder Bajaj and Anr. 2010 (8) SCC 1.*

12. On merits, it was his submission that applicants / defendants have miserably failed to disclose any cause whatsoever much less sufficient cause of exceptional and unavoidable reasons which prevented them from filing the written statement within the stipulated period of 30 days and 90 days thereafter. He also submitted that the written statement alleged to have been filed on December 18, 2018 cannot be termed as a written statement, but a bunch of papers. As would be evident from the objections raised by the Registry, the purported written statement which was filed on December 18, 2018 was unsigned, without verification clause, without supporting affidavits, without affidavit of admission and denial of documents and even the vakalatnama filed along with it was also unsigned. He stated that the written statement which has been filed along with the application also bears the date December 18, 2018, however on verification clause the month of February, 2019 is inscribed though without any date. That apart all the affidavits filed along with the written statement are dated

February 13, 2019. Therefore, the purported written statement filed on December 18, 2018 cannot be termed as written statement which merely is a bunch of papers. Thereafter, the signed written statement with verification clause, supporting affidavits and affidavits of admission / denial was filed only on February 22, 2019. So, the filing of the written statement can at best be said to have been done on February 22, 2019 and not before that. Even if the written statement is treated to be filed on December 18, 2018, then also the same is admittedly filed beyond the period of 120 days from the date of service of summons. He stated, if the date of filing of the written statement is taken on February 22, 2019, then the delay in filing the written statement is 196 days and not 131 days beyond 30 days.

13. In so far as date of service of defendant No. 4 is concerned, the defendants are manipulatively stating that she was served summons only on November 4, 2018. In this regard, he stated that on July 11, 2018, one Advocate namely Mr. Mayank Bamniyal appeared for all the defendants and made a statement that the defendants were served on July 10, 2018. The said Advocate sought time to file the vakalatnama and the written statement. However on the next date of hearing, on September 7, 2018, the very same Advocate appeared and made a statement that he does not represent defendant Nos. 4 and 5 and the submission was made only with regard to defendant Nos. 1, 2, 3 and 6. Since there was no service report on record qua defendant Nos. 4 and 5, the learned Joint Registrar directed the plaintiff to take fresh steps for service on defendant Nos. 4 and 5. The

plaintiff accordingly, took fresh process for service on defendant Nos. 4 and 5. He stated that on October 30, 2018, one Mr. Rushab Aggarwal, Advocate appeared and accepted summons on behalf of defendant Nos. 4 and 5 and sought time to file the written statement on behalf of the defendants. However, on the next date of hearing, on December 19, 2018, third Advocate namely Mr. Sayam Khetarpal appeared and made a statement that he appears for defendant nos. 1 to 3 and 6 and does not represent defendant no.4. In this manner, the defendants have been from the very beginning, making mockery of the process of the court and trying to frustrate the cause of the plaintiff. He also stated that although the order dated October 30, 2018 mentions that defendants nos. 4 and 5 are still unserved, defendant No.4 has been duly served with fresh summons on September 25, 2018 at her Karkroula address for the second time having already served once on July 10, 2018. He stated that the address of defendant no.4 as mentioned in memo of parties and the one mentioned by defendant no.4 in the affidavit filed by her is the same. The affidavit of service in this regard filed by the plaintiff is already on record. He stated that defendant Nos. 3 and 4 are husband and wife and are staying together at the same address. In these circumstances, the present application is liable to be dismissed.

O.A. 122/2019

14. At the outset Mr. Tanmaya Mehta, learned counsel appearing for appellant/plaintiff stated that a Coordinate Bench of this court while dealing with an ordinary, non-commercial, civil suit bearing no. CS(OS) 245/2019, vide order dated December 3,

2019 has permitted the written statement filed on the 149th day after service of summons to be taken on record subject to payment of cost. He stated that if a written statement can be taken on record beyond 120 days in an ordinary suit, same logic would apply to a replication. According to Mr. Mehta, the judgment of this Court in *Odeon Builders (supra)* is not applicable to an ordinary suit, wherein this court has concluded that in commercial suits the time period of 45 days cannot be extended by the Registrar or the Court. The said conclusion is based on the following reasoning:

- a. Judgment of the Supreme Court in *Popular Construction Company (supra)*, which had interpreted the provisions of Section 34 (3) of the Act of 1996 and by relying on the words ‘*but not thereafter*’, concluded that the period of 120 days prescribed as the limitation for filing a Section 34 petition, is mandatory and cannot be extended. The Court had reasoned that if the period of 120 days is not interpreted as mandatory, the words ‘*but not thereafter*’ would be rendered otiose.
- b. This court held that inherent powers cannot be used to override express provisions and hence Rules 14 and 16 of Chapter 1 of the Rules of 2018 would not come to aid in condoning delay beyond 45 days.

15. It was his submission that the judgment in *Odeon Builders (supra)* is distinguishable and further, certain arguments and submissions were not made before this Court which may

persuade the Court to take a different view. These submissions are as follows:

a. The very same logic as applied by the Supreme Court in *Popular Construction (supra)* comes to the aid of the plaintiff.

i. In *Popular Construction (supra)*, the Supreme Court reasoned that the words ‘*but not thereafter*’ would be rendered otiose if the 120 days period is not considered as mandatory. The court also consequently reasoned that Section 29(2) of the Limitation Act, 1963 (‘Limitation Act’, in short) would apply to exclude the applicability of Section 5 of the Limitation Act, since the provisions Section 34 (3) indicate an express intendment to exclude Section 5.

ii. Similarly, in the present case, if the provisions of Rule 5 of Chapter-VII of the Rules of 2018 are considered as mandatory and if the 45 days period is considered as not condonable by the Court, it would render the language of Rule 5, i.e., ‘*In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before this Court*’ which follows the words ‘*but not thereafter*’, as otiose. If the intent was to

close the right to file replication automatically after 45 days, the rule would have said so, and there was no question of ‘*appropriate orders*’ being passed by the Court. In fact, the very mention of ‘*appropriate orders*’ in the rules indicate a measure of discretion. This argument was not made in *Odeon Builders (supra)*.

- b. In *Odeon Builders (supra)*, Rule 14 of Chapter 1 of the Rules of 2018 was argued as a source of inherent power and this argument was rejected by the Court on the basis that inherent powers cannot be used to override provisions. However, what was not argued in *Odeon Builders (supra)*, is that Rule 14 is different from Rule 16. Rule 16 is similarly worded to Section 151 CPC and refers to ‘saving of inherent powers of Court’. However, Rule 14 is not saving of inherent powers but rather is an express conferment of power of relaxation, and expressly confers powers on the Court to dispense with compliance of the Rules. Once the power to relax is there, it is plenary, and applies across the Board. This logic is also clear, given that procedure is ultimately not substantive law, but only a handmaid of justice, and hence the logic is that the discretion of the Court to override procedure in the interests of justice will not and

cannot be taken away by the other provisions of the Rules of 2018. In fact, Rule 14 which is express power of relaxation would also be rendered otiose, if the 45 days period is accepted as mandatory accepting of no relaxation, and as is settled law in *Popular Construction (supra)* the provisions cannot be read so as to render one or more provisions as otiose.

c. If the intendment of the Rule making authority was to close the right to file replication after 45 days, then Rule 5 of Chapter-VII would have said so expressly, like it is said in the case of written statement under Rule 4 of Chapter-VII. Further, Rule 5 would have ended at '*but not thereafter*' like Section 34 (3), and there would have been no additional sentence requiring the Registrar to place the matter before the Court. It may be noted that this argument was also not made in *Odeon Builders (supra)*.

i. Unlike Rule 4, which in case of expiry of 120 days states that the Registrar may close the right to file written statement, Rule 5 does not contain such language, rather upon expiry of 45 days states that the Registrar to put up the matter before the Court for further orders. This distinction between the language of Rules 4 and 5, and also the addition of the

sentence *'In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before the Court'* after the words *'but not thereafter'* is indicative of a different intendment for replications compared to the 120 days period for written statements and also a different intendment compared to Section 34 (3) of the Act of 1996.

ii. That the Section 34 (3) of the Act of 1996 ends with *'but not thereafter'* and there is no equivalent provision under Section 34 (3) similar to Rule 5 of Chapter-VII (with its language relating to putting up of the matter before the Court for appropriate orders) or similar to Rule 14 of Chapter-I, which is an express conferment of power to relax the provisions of the Rules.

d. In view of the above, given the language of Rule 5 of Chapter-VII read with Rule 16 of Chapter-I of the Rules of 2018 it cannot be said that Section 29(2) of the Limitation Act applies. In other words, Section 5 of the Limitation Act cannot be said to be excluded, and therefore an application for condonation of delay in filing the replication would be governed by Section 5 of the Limitation Act,

and the power therein would also be available to the Court.

- e. Mr. Mehta stated that both *Popular Construction (Supra)* and *Odeon Builders (supra)* apply to a situation where the parent statutes itself prescribed absolute limitation on power of condonation i.e. the Act of 1996 and Commercial Courts, Commercial Division and Commercial Appellate division of High Courts Act, 2015 ('Commercial Courts Act', for short). However, in the present case, the Court is concerned with an ordinary suit which is governed by the CPC, which does not contain any provision to limit the power of the Court to condone the delays. In fact, in *Kailash v. Nankhu, 2005 (4) SCC 480*, the Supreme Court has interpreted the 90 days period in Order VIII Rule 1 of the CPC to be directory and not mandatory.
- f. In this light, when the Rules of 2018 are interpreted, the interpretation of the Rules being directory or mandatory must differ depending on the parent statute, which is being interpreted.
- g. He submitted that ordinary and commercial suits are two different classes of suits and therefore different rules of interpretations have to apply to them. A distinction between a commercial and an ordinary suit exists and ought to be appreciated, and even the legislature has recognized them as

different classes, with different rules of procedure being applied to them. According to him, the CPC applies differently to commercial Suits, and differently to ordinary Suits (since certain amendments to the CPC apply only to commercial suits, and not to ordinary suits, and to the latter the ordinary provisions of the CPC apply).

- h. Thus, even assuming, without conceding, that the 45 days period is construed as mandatory for commercial suits (subject to the argument below that even for commercial suits this would not be mandatory in view of the provisions of Rule 4 and 5 of Chapter VII, and Rule 14, Chapter 1, and since the Commercial Courts Act itself does not contain any express limitation for replications), however, for the purpose of ordinary suits, the interpretation must be guided differently, since the parent statute, i.e., the CPC does not contain any such mandatory limitation.
- i. The issue is not one of conflict between the CPC and the Original Side Rules, but the issue is how should Rule 5 of Chapter-VII read with Rules 14 and 16 of Chapter-I of the Rules of 2018 be interpreted as applying to an ordinary suit, harmoniously with the CPC, which does not contain any outer limit for filing of replication.
- j. A question of conflict would arise only if there are

irreconcilable provisions, however, according to him, in the present matter the Rules of 2018 and the CPC can be read harmoniously and in tandem with each other, given the express wording of Rule 5 of Chapter-VII (which differs with Rule 4) and the Conferment of power under Chapter-I, Rule 14 of the Rules of 2018.

- k. Since, qua replication, the parent statute of ordinary suits, i.e., the code of Civil Procedure (or for that matter even the parent statute Commercial Courts Act) does not contain any provision, the power to grant relaxation under Rule 14, Chapter-1 read with the power to pass appropriate orders under Rule 5, Chapter-VII would mean that the power of the court to condone delay is not taken away. Thus, Rule 5 of Chapter VII of the Rules of 2018 also ought to be read as directory and not mandatory in a non-commercial suit.
- l. It is important to consider that the suits in each of orders / judgments viz. *Odeon Builders (supra)*; *Cosco India Ltd. v. Parasmukh Nirman, 2019 SCC OnLine Del 9633*; *Atlanta Limited v. NHIDC 2019 SCC OnLine Del 11276* or *SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. 2019 SCC OnLine SC 226* were filed under the provisions of Commercial Courts Act and therefore the stringent provisions

relating to time lines specified under the Commercial Courts Act applied thereto.

- m. Mr. Mehta stated that the plaintiff is not suggesting that the power of condonation beyond 45 days be exercised in a routine manner. The Court may lay down appropriate parameters for the same. However, it is entirely a different scenario to urge that a constitutional court whose judges are appointed under Article 215 of the Constitution of India (albeit exercising ordinary original jurisdiction while sitting on the Original Side of the HC) would not have any power to condone delay beyond 45 days if circumstances and the interests of justice so require. Such whittling down of powers of high constitutional authorities such as High Court Judges, the same cannot and should not be easily read.
- n. The present suit is an ordinary civil suit, which is non-commercial in nature, and having being filed under Section 92 of the CPC, has public interest at its core. The present suit is still at the stage of grant of leave under Section 92 of CPC. This means that though interim orders have been passed and notice has been issued on the application under Section 92 (as is the power of the Court as held by the Supreme court in *R.M. Narayana Chettiar v. N. Lakshmanan Chettiar, 1991 1 SCC 48*), however,

formal leave to institute the suit has not yet been granted. Hence even though summons were issued in the suit, the need for completion of pleadings has not yet arisen, as that would happen only after Section 92 application is decided. Hence, the filing of the written statement is itself premature and so also therefore, the closing of the right of the plaintiff to file replication is premature. The order closing the right to file replication is liable to be set aside on this ground alone.

16. On the other hand, Mr. Sudhir Nandrajog, learned Sr. Counsel appearing for the defendants in the Chamber Appeal submitted that the written statement was filed by the defendants on July 15, 2019 which was served on the plaintiffs through post on July 17, 2019.

17. Further vide order dated July 23, 2019, this court granted four weeks' time to the plaintiffs to file replication. However, in complete contravention of the order and the Rules of 2018, the appellants/plaintiffs did not file their replication or their affidavits of admission / denial within the stipulated time period.

18. Since no replication or affidavits of admission / denial had been filed by the appellants/plaintiffs, the learned Joint Registrar on September 30, 2019 closed the right of the plaintiffs to file replication and recorded that the consequence of the non-filing of an affidavit of admission / denial shall follow. Pertinently, the learned Joint Registrar was fully conscious of the provisions of Chapter VII Rule 5 of the Rules of 2018, recorded

the same in his order dated September 30, 2019 and correctly placed the matter before this court for framing of issues and / or further direction on November 1, 2019, which was in full compliance with the letter and spirit of the Rules of 2018.

19. Mr. Nandrajog submitted that in the suit, the replication and the affidavit (s) of admission / denial have been filed only on October 15, 2019. As such the replication has been filed

- (i) after 84 days, i.e., from the date when the plaintiffs were permitted to file a replication in terms of the order of this Court dated July 23, 2019. Thus, there is a delay of 39 days beyond the maximum 45 days' time period provided for under the Rules of 2018.
- (ii) after 90 days, i.e., from the date when the plaintiffs received a copy of the written statement, i.e., dated July 17, 2019 – as is the time period contemplated in Chapter VII Rule 5 of the Rules of 2018. Thus, there is a delay of 45 days beyond the maximum 45 days time period provided for under the Rules of 2018.

20. He stated that the plaintiffs have not filed an application or otherwise sought permission to file their replication within the extendable 15 days period beyond the normal 30 days time period. As a result, learned Joint Registrar did not have the occasion to impose costs on the plaintiff (as contemplated in Chapter VII Rule 5) nor to provide them with any extra time to

file the replication or affidavit of admission / denial when the matter was listed before him on September 30, 2019. In fact, the replication and affidavit of admission / denial were not even on record before the learned Joint Registrar on September 30, 2019 and were only filed fifteen days thereafter on October 15, 2019.

21. In so far as the issue that the instant suit is an ordinary suit and not a commercial suit, so different rules of interpretations have to apply is concerned, it was the submission of Mr. Nandrajog that the provisions of the Rules of 2018 as framed under the Delhi High Court Act will apply in their full force irrespective of the fact that instant suit does not fall within the definition of a commercial dispute in terms of Section 2(c) of the Commercial Courts Act. Moreover, it is no longer *res integra* that the provisions of special law will prevail over those of a general law. It is also no longer *res integra* that rules made under a statute must be treated for all purposes of construction or obligation exactly as they were in the Act and are to be of the same effect as if contained in Act. He relied upon the Judgment of the Supreme Court in the case of ***State of U.P. and Ors. v. Babu Ram Upadhyay, AIR 1961 SC 751***. He also relied upon the Judgment in the case of ***Chief Forest Conservator (Wildlife) & Ors. v. Nisar Khan, 2003 (4) SCC 595*** wherein the Supreme Court has held that when rules are validly framed, they should be treated as a part of the Act.

22. As such it is clear that the Rules of 2018, being validly framed must be read as part of the Delhi High Court Act.

Further, Delhi High Court Act, being a special law will prevail even over the Commercial Courts Act. The Commercial Courts Act merely inserts amendments to the CPC. The CPC being general rule, will not prevail over the Delhi High Court Act and rules framed thereunder – which constitute a special law.

23. In so far as the issue of inherent powers of the Court should not be exercised in a manner contrary to expressly provide procedure is concerned, it was submitted by Mr. Nandrajog that the provisions of Chapter VII Rule 5, 6, 7 of the Rules of 2018 are mandatory and cannot be dispensed with either under the guise of the inherent power of the High Court (under Chapter I, Rule 16 of the Rules of 2018) or its power to dispense with requirement to comply with the Rules and give directions in matters of practice and procedure under Chapter I, Rule 14 of the Rules of 2018. In support of his submission, he relied upon the Judgments of the Supreme Court in the case of *Padam Sen (supra)* and *Manohar Lal Chopra (supra)*. So, he stated that reliance cannot be placed on Chapter I Rule 16 of the Rules of 2018 in order to permit the plaintiffs to bring on record its replication and affidavit of admission / denial beyond the mandatory time period within which they are to be filed and this court cannot resort to the provisions of Chapter I Rule 16 in order to permit the plaintiffs from doing an act which is otherwise expressly and mandatorily barred by Chapter VII Rule 5, 6 and 7 of the Rules of 2018. That apart, a co-ordinate Bench of this court in a recent Judgment in *COSCO (India) Ltd. (supra)* has held, in the context of the time period for filing a

Written Statement under the Rules of 2018, a mandatory requirement under the Rules cannot be dispensed with under the guise of the Courts power to give directions in matters of practice and procedure. For these reasons, the power vested in this court under Chapter I, Rule 14 and Rule 16 of the Rules of 2018 cannot be used in a manner contrary to the expressly mandatory provisions of Chapter VII Rules 5, 6 & 7. As such the requirement to file a replication and affidavit of admission / denial within a maximum time period of 45 days, and not thereafter, contained in Chapter VII being an express and mandatory procedure stipulated under the Rules of 2018 cannot be dispensed with by invoking the power of this Court under Chapter I, Rules 14 and 16. Additionally in ***Popular Construction (supra)***, the Supreme Court has examined the effect of the use of the words '*but not thereafter*' in relation to the time limit for filing objections against the Arbitral Award.

24. On the issue of mandatory requirement under the Rules to file replication within 45 days cannot be dispensed with, it was the submission of Mr. Nandrajog, that catena of Judgments of the Supreme Court and this court have now settled the position that a mandatory requirement under the CPC or the High Court Rules cannot be dispensed with. Further, he stated that it is now a settled rule of statutory interpretation that any interpretation which renders otiose any part of a statute should be avoided. The Supreme Court while examining the amendments to the CPC after the coming into force of the Commercial Courts Act has held in ***SCG Contracts India Pvt. Ltd. (Supra)*** that no

extension of time can be granted for filing of the written statement beyond 120 days. Relying on the above judgment of the Supreme Court, a Coordinate Bench of this court has recently in ***Unilin Beheer B.V. v. Balaji Action Buildwell: 250 (2019) DLT 478*** has held as under:

“26. It is a settled rule of statutory interpretation that the interpretation which renders otiose any part of a statute, should be avoided.

.....
31. I thus hold, that in the event of the Written being filed without affidavit of admission / denial of documents, not only shall the Written Statement be not taken on record but the documents filed by the plaintiff shall also be deemed to be admitted on the basis of which admission the court shall be entitled to proceed under Order VIII Rule 10 of the CPC.”

He also relied upon the judgments of this court in the case of ***Odeon Builders Pvt. Ltd. (supra)*** and ***Atlanta Limited (supra)***.

25. From the review of the above judgments passed by the Supreme Court and this court, it is clear that the express and mandatory procedure laid out in Chapter VII, Rules 5, 6 & 7 of the Rules of 2018 cannot be rendered otiose by invoking the inherent powers of this Court or the power of this court to give directions for practice and procedure. This Court has time and again held that a replication must be filed within the time period laid down in Chapter VII Rule 5 and must be accompanied by an affidavit of admission / denial. In case, it is not filed within 30 days time limit only 15 days extendable period may be granted to the plaintiff within which to comply with the express and mandatory provisions of Chapter VII Rules 5, 6 & 7.

Further, the Supreme Court has already held that use of the word ‘*but not thereafter*’ in a provision that limits a time period for filing is express and clear and cannot be circumvented. Moreover, the Supreme Court has held that use of the words ‘*but not thereafter*’ even ousts the operation of Section 29(2) of the Limitation Act. He submitted that the situation in the instant matter is analogous as Chapter VII Rule 5 clearly states that:

“The replication, if any, shall be filed within 30 days of receipt of the written statement. If the court is satisfied that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons in filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days but not thereafter. For such extension, the plaintiff shall be burdened with costs, as deemed appropriate” (emphasis supplied).

26. On the judgment of ***Odeon Builders (Supra)*** dealing with power of Joint Registrar and not Court, it was the submission of Mr. Nandrajog that the plaintiffs in their replication has incorrectly submitted that the ld. Joint Registrar would only have the power to place the matter before the court for appropriate orders in case of replication is not filed. The learned Joint Registrar is only required to place the matter before the Court in the event that a plaintiff files its replication and affidavit of admission / denial within the 15 extra days available (beyond 30 days) along with an application seeking condonation of delay. This application must show that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons from filing the replication within the normal 30 days period. In the present

case, the plaintiff has not only not filed the replication within the normal 30 days period but has also not filed the replication within the extra 15 days available in terms of Chapter VII, Rule 5 of the Rules of 2018. As such, this court would be correct in relying on the decision in *Odeon Builders (supra)* and *Atlanta Limited (supra)* to hold that neither the Ld. Joint Registrar nor this Court have the power to permit filing of a replication and affidavit of admission / denial beyond a period of 45 days provided for in Chapter VII, Rule 5 of the Rules of 2018.

27. He further submitted that the learned Joint Registrar has been conferred the power to both allow an application seeking leave to file a replication as well as to close the right to file a replication. The right to close the right to file a replication flows from the power conferred on the learned Joint Registrar in terms of Chapter II Rule 60 of the Rules of 2018. The said rule grants the Ld. Joint Registrar the right to decide applications for enlargement or abridgement of time including applications to foreclose the right to file written statements. It is submitted that a replication is nothing but an ‘additional written statement’ as referred to in Order VIII Rule 9 of the CPC.

28. Further, the power of a learned Joint Registrar to entertain applications seeking leave to file a replication flows from Chapter II Rule 20 of the Rules. The said rule confers on the learned Joint Registrar the power to decide applications for leave to file a further or additional written

statement. He submitted that the language of this Rule, read together with Order VIII Rule 9 CPC clearly refers to the filing of replication and, the replication is nothing more than an additional written statement.

29. On the issue of CPC does not prescribe any limitation and Order VIII Rule 9 is limitation for 30 days, it is the submission of Mr. Nandrajog that Order VIII Rule 9 CPC does not prescribe any time limit within which additional written statement or replication has to be filed. He stated that this court in *M/s. Anant Construction (P) Ltd. v. Shri Ram Niwas, ILR (1995) II Delhi 76*, has held that a replication is permissible only in three situations; (i) when required by law; (ii) when a counter claim is raised or set off is pleaded by the defendants; (iii) when the court directs or permits a replication being filed.

30. He also stated that the plaintiffs cannot be allowed to rely on the provisions of Section 29(2) of the Limitation Act. He stated that it is apparent that it will only apply for the purposes of condoning the delay in filing of the following: -

- (i) Suits;
- (ii) Appeals; and
- (iii) Applications.

A replication or an affidavit of admission / denial do not fall within the three categories to which the relaxation provided in Section 29 (2) of the Limitation Act will apply.

31. In so far as the issue of High Court exercising Ordinary Original Civil Jurisdiction is a Civil Court in terms

of the CPC is concerned, it was the submission of Mr. Nandrajog that this Court in the instant matter is exercising its Ordinarily Original Civil Jurisdiction as a Civil Court understood in terms of the CPC. As such, in the instant matter this Court will not be able to exercise its writ jurisdiction in terms of Article 226 or Article 227 of the Constitution of India. It was his submission that this court is bound by the provisions of Chapter VII, Rules 5, 6 & 7 of Rules of 2018 and does not have the power to permit any extra time (beyond the period extendable up to of 45 days) to the plaintiffs to file its replication and affidavit of admission / denial and seeks the dismissal of the chamber appeal.

32. Having heard the learned counsel for the parties, in both the cases, the issue, which arises for consideration is whether the delay in filing the written statement over and above 120 days by defendant Nos. 2, 3 and 6 and delay in filing the written statement by defendant No.4 over and above 30 days from the date of service of summons needs to be condoned and the written statement is required to be taken on record.

33. A similar issue arises in Chamber Appeal bearing O.A. No. 122/2019 that whether the learned Joint Registrar had rightly closed the right of the plaintiff in CS(OS) 182/2019 in filing the replication being beyond a period of 45 days, as prescribed in the Rules of 2018.

34. To understand the aforesaid issues, it is necessary to refer to the provisions of Order 8 Rule 1 CPC, Rules 14, 16

and 17 of Chapter I of the Rules of 2018 and Rules 4, 5 and 6 of Chapter VII of the Rules of 2018.

“

ORDER VIII

WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

1. Written Statement- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

**Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons]*

XXX XXX XXX

**DELHI HIGH COURT (ORIGINAL SIDE)
RULES, 2018**

CHAPTER-I

GENERAL

XXX XXX

14. Court's power to dispense with compliance with the Rules.—*The Court may, for sufficient cause shown, excuse parties from compliance with any requirement of these Rules, and may give such*

directions in matters of practice and procedure, as it may consider just and expedient.

XXX XXX

16. Inherent power of the Court not affected. — *Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court.*

17. Miscellaneous.—(1) *Except to the extent otherwise provided in these Rules, applicable provisions of the Code, the Commercial Courts Act and the Information Technology Act, 2000 shall apply to all proceedings on Original Side.*

(2) *Reference to any gender shall, unless the context so otherwise requires, be meant and be construed as a reference to all genders.*

(3) *Nomenclature(s)/ Category(s) of various proceedings to be instituted on the Original Side of the Court shall be as per extant notifications/ directions.*

XXX XXX

CHAPTER-VII

APPEARANCE BY DEFENDANT, WRITTEN STATEMENT, SET OFF AND COUNTER-CLAIM

XXX 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.

5. Replication.-*The replication, if any, shall be filed within 30 days of receipt of the written statement. If the Court is satisfied that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons in filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days but not thereafter. For such extension, the plaintiff shall be burdened with costs, as deemed appropriate. The replication shall not be taken on*

record, unless such costs have been paid/ deposited. In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before the Court. An advance copy of the replication together with legible copies of all documents in possession and power of plaintiff, that it seeks to file along with the replication, shall be served on the defendant and the replication together with the said documents shall not be accepted unless it contains an endorsement of service signed by the defendant/ his Advocate.

6. Affidavit of admission/ denial of documents with replication.- *Alongwith the replication, the plaintiff shall also file an affidavit of admission/ denial of documents filed by the defendant, without which the replication shall not be taken on record.”*

35. I may, at this stage, mention that I have recently in ***Odeon Builders Pvt. Ltd. (supra)*** has decided that the learned Joint Registrar / Court cannot extended the time beyond 45 days for filing the replication. The reasoning given by me was to the following effect:-

“9. Having heard and considered the rival submissions made by the learned counsel for the parties, the issue which falls for consideration in this case is, whether

the learned Joint Registrar was right in closing the right of the appellant / plaintiff to file replication and affidavit of admission / denial of documents. To answer the issue, it is necessary to reproduce here the relevant Rule 5 of Chapter VII of Delhi High Court (Original Side Rules), 2018, which reads as under:

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

endorsement of service signed by the defendant / his Advocate.

10. *Mr. Tandon, learned counsel for the plaintiff had relied upon Rules 14 and 16 of Chapter-I of Delhi High Court (Original Side Rules), 2018 which I have already re-produced above. Perusal of Rule 5 clearly reveals that the period within which replication could be filed is 30 days and 15 days as extended time. The words "not thereafter" under Rule 5 are of some significance. A similar provision of this nature in the context of Arbitration and Conciliation Act, 1996 had come up for consideration before the Supreme Court in the case of Union of India v. Popular Construction Company (2001) 8 SCC 470 wherein the court was considering the issue whether the provisions of Section 5 of the Limitation Act shall apply to a petition under Section 34 of the Arbitration and Conciliation Act, 1996, more specifically in view of Section 34, sub-section (3) has held as under:-*

"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." (emphasis supplied)

11. *On similar lines, by relying upon its opinion in Popular Construction Co. (supra), the Supreme Court has in the case of P. Radha Bai and Ors. v. P. Ashok Kumar and Ors. 2018 (5) ARBLR 204 (SC), wherein the issue which fell for consideration was whether Section 17 of the Limitation Act, is applicable while determining the limitation period under Section 34 (3) of the Arbitration and Conciliation Act, the Court has in Para 37 held as under:*

"37. This Court in Popular Construction Case (supra) at page 474 followed the same approach when it relied on the phrase "but not thereafter" to hold that Section 5 of the Limitation Act was expressly excluded.

"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."

12. 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 and Ors. 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.”

36. Having said that, the learned counsel for the applicants/defendants in I.A. 2905/2019 in CS(OS) 149/2018 and Mr. Tanmaya Mehta appearing for the appellant in OA 122/2019 in CS(OS) 182/2019 would justify the said judgment by stating that in ***Odeon Builders Pvt. Ltd. (supra)***, this Court was concerned with a commercial suit as defined in the Commercial Courts Act, which is different from an ordinary suit. In other words, according to them, the ratio in ***Odeon Builders Pvt. Ltd. (supra)*** shall have no applicability to an ordinary suit.

37. The additional submissions of Mr. Mehta specifically are the following:-

(i) The Supreme Court in ***Popular Construction (supra)*** also held that Section 29(2) of the Limitation Act would apply to exclude the applicability of Section 5 of the Limitation Act, since the provisions of Section 34(3) indicate an express intendment to exclude Section 5.

(ii) The mention of the words ‘*in case no replication is*

filed within the extended time also, the Registrar shall place the matter for appropriate orders before this Court', in Rule 5, indicates a measure of discretion.

(iii) Rule 14 of Chapter I of the Rules of 2018 is not saving inherent powers of relaxation and expressly confers power on the Court to dispense with compliance of the Rules of 2018. In other words, once power to relax is there, it is plenary and applies across the board.

(iv) If the intendment of the rule making authority was to close the right to file replication after 45 days, then Rule 5 of Chaptr-VII would have said so expressly like it says in case of written statement under Rule 4. Further, Rule 5 would have ended at *'but not thereafter'* like Section 34(3) and there ould not have been any additional sentence requiring *'...Registrar to place the matter before the Court'*.

(v) In view of language of Rule 5 of Chapter-VII read with Rule 16 of Chapter-I of the Rules of 2018, it cannot be said that Section 29(2) of the Limitation Act applies. In other words, Section 5 of the Limitation Act cannot be said to be excluded and therefore an application for condonation of delay in filing replication would be governed by Section 5 of the Limitation Act.

(vi) The suit is governed by CPC, which does not contain any provision to limit the power of the Court to condone the delay.

(vii) The ordinary and commercial suits are two different classes of suits and therefore different rules of interpretation

have to apply for ordinary suits. The Rules of 2018 have to be interpreted harmoniously with CPC.

(viii) The power of condonation of delay must not be exercised in a routine manner but guidelines to be laid down in that regard.

38. As state above, it is the plea of Mr. Mehta that CPC applies differently to commercial suits and differently to ordinary suits. In other words, certain amendments to the CPC applies because of the Commercial Courts Act and the ordinary suit is governed by the provisions of the Rules of 2018.

39. As I have already noted the broad submissions made by the learned counsel for the parties, at the outset, I may state that learned counsel for the plaintiff in CS(OS) 149/2018 submitted in view of the judgment in *Iridium India Telecom Ltd. (supra)* that the Rules of 2018 framed by this Court shall override the provisions of the CPC. In fact Mr. Mehta has conceded to the said position that the Rules of 2018 shall prevail over the provisions of the CPC.

40. In *Iridium India Telecom Ltd. (supra)*, the Supreme Court has traced the history of the charter establishing High Courts in the country and after exhaustive consideration of various aspects has, *inter-alia*, held that the rules framed by High Courts would prevail over the provisions of the CPC, even if the said rules are inconsistent with the Code. The contention that the Letters Patent and other rules framed by High Courts to regulate its own procedure are in nature of

subordinate or delegated legislation and, therefore, cannot override the legislative mandate and substantive provisions of CPC was rejected. The Supreme Court in this regard referred to Section 129 of the CPC and the object and purpose of the enactment of the said Code and distinction as drawn between proceedings before civil courts and proceedings on the original side of the chartered High Courts. It was further held subsequent amendments and even the last amendment of the Code in the year 2002 does not affect this principle and the rules will override and are binding even if they are contrary or inconsistent with the Code.

41. Even the Full Bench of this Court, similarly in *Akash Gupta (supra)*, on which reliance has been placed, had stated as under:-

“9. The Delhi High Court in the case of Printpak Machinery v. Jay Kay Paper Congeners reported in AIR, 1979 Delhi 271 has also held that the non-obstinate clause in Section 129 of the Code left untouched the original side rules of High Court whenever framed and the said rules would prevail over the Code.

10. It is not disputed that Rules 3 and 4 of the Rules have been made under Section 7 of the Act. The said rules have been framed under Sections 122 and 129 of the Code and under Rule 19 of Chapter-I of the Rules. Original Side proceedings of the High Court are to be conducted as per the Rules and the Code is applicable

when the rules are silent. Rule 19 of Chapter I of the Rules reads as under:-

19.Miscellaneous - Except to the extent otherwise provided in these rules, the provisions of the Civil Procedure Code shall apply to all proceedings on original side.”

42. I must also state here that wherever the Rules are silent, the provisions of CPC shall hold the field.

43. Having said that, in these cases, this Court is concerned with the filing of the written statement / replication. I may state here, this Court had framed the Original Side Rules in the year 1967 (Old Rules). Rule 3 of Chapter-VI of the Old Rules refers to the extension of time for filing the written statement. The same is reproduced as under:-

“ 3. Extension of time for filing written statement -
Where the defendant fails to file written statement within a 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.”

44. I may also state that there was no provision in the Old Rules, which refer to the filing of the replication. It is also noted that this Court and the Supreme Court has interpreted

Order VIII Rule 1 of CPC and Rule 3 of Chapter-VI of Old Rules to mean the period of 90 days for filing the written statement is not mandatory and for good, valid and sufficient cause being shown, the time for filing written statement beyond 90 days can be extended. The position under the Old Rules has undergone a change with the framing of Rules of 2018 where a specific provision (Chapter-VII, Rule 5) with regard to filing of the replication has been introduced and a time period extendable up to 120 days for filing of written statement (Chapter-VII, Rule 4).

45. In the abovesaid background, let me deal with the issue whether the delay in filing the written statement by defendant Nos. 2, 3 and 6 beyond 120 days and delay in filing the same by defendant No. 4 over 30 days needs to be condoned. In this regard, the submission of the learned counsel is that the suit being an ordinary suit, the rigors of the filing of the written statement in commercial suit must not be made applicable and on sufficient cause being shown, the delay in filing the written statement should be condoned.

46. Before I answer this issue, it is necessary to refer to the judgment of the Supreme Court, as referred to in the case of *Kailash v. Nankhu (supra)*. In the said judgment, the Supreme Court held that the prescription of 90 days period in Order 8 Rule 1 CPC to be directory and not mandatory.

47. Similarly, in *Desh Raj (supra)*, the Supreme Court by referring to its judgment in *Atcom Technologies Ltd. vs. Y. A. Chunawala & Co., (2018) 6 SCC 639*, held that Order

VIII Rule 1 CPC continues to be directory and does not do away with inherent discretion of the Courts to condone certain delays. It is to be noted that in the aforesaid judgment of *Desh Raj (supra)*, the Supreme Court was concerned with the issue of closing the right of the defendant in filing written statement under Order VIII Rule 1 instituted in trial court subordinate to the High Court and the Supreme Court was not concerned with the effect of the Rules of 2018 framed by this Court. Hence, the judgment of *Desh Raj (supra)* referred to by the learned counsel for the defendant shall not be applicable in the facts of this case. Similarly, in *Atcom (supra)* also the Supreme Court was concerned with the provisions of CPC.

48. Now coming to the issue of delay, Rule 4 of Chapter VII of the Rules of 2018, which is reproduced above, is very clear and on reading, the following position emerges:-

(i) the extension of the time beyond 30 days shall be for further period as ‘*not exceeding*’ 90 days and ‘*but not thereafter*’;

(ii) *In case the written statement is not filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.*

49. From the above, it is seen that the maximum period permissible for filing written statement is 120 days and not beyond that. In other words, the Rule fixes an outer limit for filing the written statement. The words ‘*but not thereafter*’ have relevance and they do indicate that the period cannot be

extended further. Further, the Rule also mandates, if the written statement is not filed then the Registrar may pass orders closing the right. This part of the Rule only gives discretion to the Registrar to give a declaration of the fact that the right of the defendant to file written statement has been closed/forfeited. In fact, this part of the Rule depicts the consequence of not filing the written statement within the extended time. In this regard, I may reproduce paras 13 and 14 of the judgment in *SCG Contracts India Pvt. Ltd. (supra)*, wherein the Supreme Court *inter-alia* held that where in any provision (Order VIII Rule 1), the consequences are clearly laid down then the same could be held as mandatory. In fact, the Supreme Court held, the consequence like, non-extension of any further time and the fact that the Court shall not allow a written statement to be taken on record, as some examples in that regard.

“13. Several High Court judgments on the amended Order VIII Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. [See Oku Tech Private Limited vs. Sangeet Agarwal & Ors. by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other judgments including a judgment of the Delhi High Court in Maja Cosmetics vs. Oasis Commercial Pvt. Ltd. 2018 SCC Online Del 6698.

14. *We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.”*

50. In ***Odeon Builders Pvt. Ltd. (surpa)***, this Court had interpreted the words ‘*but not thereafter*’ as found mentioned in Rule 5 of Chapter VII of the Rules of 2018 in para 12 in the following manner:-

“12. So it must be held by including the words "not thereafter" in Rule 5 of Chapter VII 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 and Ors. 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.”

51. The Apex Court in a Constitutional Bench decision in ***New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. AIR 2020 1267***, while adjudicating as to whether under Section 13 (2) (a) of the Consumer Protection Act, 1986 (‘CPA’, for short), the District Forum has the power to extend the time for filing the response beyond the period of 15 days in addition to 30 days, deliberated at length the mandatory character of the said provision. Section 13(2) (a) of the CPA reads as under:

“Section 13. Procedure on admission of complaint.-

Xxx xxx xxx

(2)..

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

.... ”

52. It was held by the Court that from a bare reading of the provision as well as owing to the couching of the provision in prohibitive or negative language, the intension of the legislature in its wisdom was to make it mandatory, without empowering the District Forum with any discretion to extend the time beyond 45 days in total. Relevant paragraphs of the Judgment read as under:

“8. A bare reading of Section 13(2)(a) of the Act makes it clear that the copy of the complaint which is to be sent to the opposite party, is to be with the direction to give his version of (or response to) the case (or complaint) within a period of 30 days. It further provides that such period of 30 days can be extended by the District Forum, but not beyond 15 days.

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13. On the contrary, Sub-section (2)(a) of Section 13 of the Consumer Protection Act provides for the opposite party to give his response 'within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum'. The intention of the legislature seems to be very clear that the opposite party would get the time of 30 days, and in addition another 15 days at the discretion of the Forum to file its response. No further discretion of granting time beyond 45 days is intended under the Act.

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17. *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 concerned authority. 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.*

By specifically enacting a provision Under Sub-section (3) of Section 13, with a specific clarification that violation of the principles of natural justice shall not be called in question where the procedure prescribed Under Sub-sections (1) and (2) of Section 13 of the Consumer Protection Act has been followed or complied with, the intention of the legislature is clear that mere denial of further extension of time for filing the response (by the opposite party) would not amount to denial or violation of the principles of natural justice. This provision of Section 13(3) reinforces the time limit specified in Section 13(2)(a) of the Act.

18. *This Court in the case of Lachmi Narain v. Union of India MANU/SC/0012/1975 : (1976) 2 SCC 953 has held that "if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the interest that*

the provision is to be mandatory". Further, hardship cannot be a ground for changing the mandatory nature of the statute, as has been held by this Court in Bhikraj Jaipurai v. Union of India MANU/SC/0045/1961 : AIR 1962 SC 113 : (1962) 2 SCR 880 and Fairgrowth Investments Ltd. v. Custodian MANU/SC/0898/2004 : (2004) 11 SCC 472. Hardship cannot thus be a ground to interpret the provision so as to enlarge the time, where the statute provides for a specific time, which, in our opinion, has to be complied in letter and spirit.

This Court, in the case of Rohitash Kumar v. Om Prakash Sharma MANU/SC/0936/2012 : (2013) 11 SCC 451 has, in paragraph 23, held as under:

23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice.

While concluding, it was observed "that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal.

Further, it has been held by this Court in the case of Popat Bahiru Govardhane v. Special Land Acquisition Officer MANU/SC/0851/2013 : (2013) 10 SCC 765 that the law of limitation may harshly affect a particular party but it has to be applied with all its

vigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds, even if the statutory provision may cause hardship or inconvenience to a particular party.

19. 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.

This Court, in the case of Laxminarayan R. Bhattad v. State of Maharashtra MANU/SC/0287/2003 : (2003) 5 SCC 413, has observed that "when there is a conflict between law and equity the former shall prevail." In P.M. Latha v. State of Kerala MANU/SC/0190/2003 : (2003) 3 SCC 541, this Court held that "Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law." In Nasiruddin v. Sita Ram Agarwal MANU/SC/0100/2003 : (2003) 2 SCC 577, this Court observed that "in a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom." In E. Palanisamy v. Palanisamy MANU/SC/0967/2002 : (2003) 1 SCC 123, it was held that "Equitable considerations have no place where the statute contained express provisions." Further, in India House v. Kishan N. Lalwani MANU/SC/1182/2002 :

(2003) 9 SCC 393, this Court held that "The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations."

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.

20. It is true that 'justice hurried is justice buried'. But in the same breath it is also said that 'justice delayed is justice denied'. The legislature has chosen the latter, and for a good reason. It goes with the objective sought to be achieved by the Consumer Protection Act, which is to provide speedy justice to the consumer. It is not that sufficient time to file a response to the complaint has been denied to the opposite party. It is just that discretion of extension of time beyond 15 days (after the 30 days period) has been curtailed and consequences for the same have been provided Under Section 13(2)(b)(ii) of the Consumer Protection Act. It may be that in some cases the opposite party could face hardship because of such provision, yet for achieving the object of the Act, which is speedy and simple redressal of consumer disputes, hardship which may be caused to a party has to be ignored."

53. Rule 4 of Chapter VII also contains the phrase '*period not exceeding*', similar to Section 13(2) (a) of the CPA. Inference can be drawn from *New India Assurance (supra)* to hold that, in addition to '*but not thereafter*', Rule 4 of Chapter VII contains the phrase '*period not exceeding*' having a mandatory flannel.

54. The said interpretations hold good for Rule 4 of Chapter VII of the Rules of 2018, which also contemplates

extension of time for filing written statement beyond 30 days, for a '*period not exceeding*' 90 days '*but not thereafter*'. Moreover, the Rules of 2018 came into effect after the Commercial Courts Act was notified and it can very well be presumed that a total of 120 days (30+90) was granted for filing the written statement in the Rules of 2018, drawing spirit from the upper limit amongst the time periods provided in Order VIII Rule 1 and its *proviso* (applicable to commercial suits), to make it applicable to all suits filed in the Original Side of this Court.

55. Having deliberated on the position of law, it is now relevant to compute the actual delay in filing the written statement by defendant No. 2,3,4 and 6 beyond the initial period of 30 days from date of service of summons. There is no dispute insofar as date of service of summons on defendant Nos. 2,3 and 6 are concerned, which was July 10, 2018. The period of 30 days expired in and around August 9, 2018 and the further 90 days mark expired on November 7, 2018. Assuming for a moment the date of filing of the written statement as stated by the defendants i.e. December 18, 2018, is taken at its face value, still the said date is beyond a period of 120 days.

56. Now, there is a dispute between the parties on the actual date of service of summons on defendant No.4. From a perusal of the Order of this Court dated September 7, 2018 it is clear that fresh service was initiated for defendant No.4. Even though appearance was entered on behalf of defendant

No.4 by an Advocate on October 30, 2018, on the next date of hearing i.e. on December 19, 2018 another Advocate entered appearance for defendant No.4, and stated that written statement along with an application for condonation of delay was filed on December 18, 2018. The service having been effected, there was appearance for defendant No.4 on October 30, 2018 and the 30 days period within which defendant No.4 had to file the written statement expired on November 30, 2018 prior to date of filing of written statement on December 18, 2018, as claimed by the defendants.

57. Be that as it may, it is pertinent to note the objections were raised by the Registry, on the said written statement filed on behalf of defendant 2,3,4 and 6 on December 18, 2018, that the said written statement as well as the vakalatnama was unsigned and filed without verification clause, without affidavit of admission and denial of documents. Thus, the filing done on December 18, 2018 can be said to be hopelessly inadequate and insufficient containing defects which are fundamental to the institution of proceedings rendering it a *non-est* filing and the date of initial filing needs to be considered as to be date on which defects have been cured (Ref:- *Ashok Kumar Parmar vs.*

D.C. Sankhla, 1995 RLR 85; Development Authority v. Durga Construction Co.: 2013 (139) DRJ 133; Jay Polychem (India) Ltd. and Ors. vs. S.E. Investment, MANU/DE/1694/2018).

58. As per the Registry Log, after curing the defects, the written statement was filed on February 25, 2019 and even the verification clauses for all the defendants bear the date of verification as February 13, 2019. Therefore, the filing done on December 18, 2018 is nothing but a *non-est* filing.

59. Even if December 18, 2018 is taken as the date of proper filing of written-statement for defendant Nos.2, 3 and 6, the filing is not within a period of 120 days. Therefore, it must be held that the defendant Nos. 2, 3, and 6 having not filed the written statement within 120 days have forfeited their right to file the same. Insofar as defendant No.4 is concerned, if December 18, 2018 is taken as a date of proper filing, the filing is within the 120 days period but beyond the initial 30 days mark from date of service of summons. However, date of proper filing being February 25, 2019, beyond the period of 30 days but within 120 days, and having shown no proper/sufficient cause or reason for condonation of delay for the period beyond 30 days in the application, right of defendant No.4 to file written statement stands forfeited and the application being I.A. 2906/2019 is dismissed.

60. Now coming to the Chamber Appeal No. 122/2019 in CS(OS) 182/2019 wherein replication has not been filed within time and the right has been forfeited by the Registrar. The filing of replication is governed by Rule 5 of Chapter VII of the Rules of 2018.

61. The plea of Mr. Mehta is, if the provision of Rule 5 is

construed as mandatory and if the delay beyond 45 days is not condonable by the Court it would render the language of Rule 5 that '*In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before this Court*', which follows the words "*but not thereafter*" otiose. In other words, if the intention was to close the right to file replication automatically after 45 days, the Rule would have said so and there was no question of placing the matter before Court for appropriate orders.

62. I find, in this Rule also, the following is the position:-

- (i) The replication shall be filed within 30 days of receipt of the written statement;
- (ii) If the filing of replication is prevented for sufficient cause for exceptional and non-avoidable reasons, the Court *may extend the time for a period not exceeding 15 days but not thereafter*;
- (iii) In case no replication is filed within the extended time, the Registrar shall place the matter before the Court for appropriate orders.

63. I have, in *Odeon Builders (supra)*, already taken a view on Rule 5 of Chapter-VII of the Rules of 2018. No doubt, that view was with regard to a commercial suit but my conclusion in para 12 of the said judgment, which I have already reproduced above would hold good for ordinary suit as well. It is also a settled law of interpretation as held by the Supreme Court in the case reported as *Raghunath Rai*

Bareja and Ors. vs. Punjab National Bank and Ors., (2007) 2 SCC 230, that a statute should be given literal meaning and the words inserted has a purpose and the Court should not deviate from what has been expressly provided.

64. Moreover, the Supreme Court in *New India Assurance Limited (supra)*, as detailed above (in paragraphs 51,52) has held in affirmative, the mandatory nature of '*period not exceeding*'. Rule 5 of Chapter VII in addition to the mandatory phrase 'but not thereafter' also contains '*period not exceeding*'.

65. The plea of Mr. Mehta is that the words '*the Registrar shall forthwith place the matter for appropriate orders before the Court*' after the words '*but not thereafter*' is indicative of a different intendment as compared to 120 days for written statement and with regard to Section 34(3) of the Act of 1996. This submission of Mr. Mehta is not appealing in view of interpretation given to the words '*but not thereafter*' to mean that no further time shall be granted for filing replication. The words '*the matter shall be placed before the Court for further orders*' cannot be construed to mean that the orders shall be passed for extending the time for filing the replication. The latter words must be construed to mean placing the matter before the Court for declaring the right of the plaintiff to file replication as closed. Otherwise, the words '*not exceeding 15 days*' and '*but not thereafter*' in Rule 5 shall become otiose.

66. It is, however pertinent to note that in *New India*

Assurance (supra) reference was made by the Supreme Court to the directory nature of Order VIII Rule 1 read with Order VIII Rule 10 of CPC, where Order VIII Rule 10 lays down the consequence of non-filing of written statement within time provided/allowed under Rule 1 as ‘*the court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit*’, granting a discretion on the Court either to pronounce judgment or pass appropriate orders. It was also duly noted by the Court that the same was mandatory for suits filed under the Commercial Courts Act. Even though on a first blush it may appear that *New India Assurance (supra)* has covered the plea taken by Mr. Mehta as per Rule 5 of Chapter VII ‘*the Registrar shall forthwith place the matter for appropriate orders before the Court*’ after the words ‘*but not thereafter*’ is indicative of a different intendment i.e. its directory nature, on a deeper consideration it is clear that the Rule 5 of Chapter VII of Rules of 2018 contains the phrases ‘*period not exceeding*’ and ‘*but not thereafter*’, both of which have been held to be mandatory, whereas the Order VIII Rule 1 read with Order VIII Rule 10 in the absence of such phrases grants discretion to the Court to pass such orders, making the entire scheme directory.

67. One of the submissions of Mr. Mehta was that in view of Chapter-VII, Rule 5 and Chapter-I, Rule 16 of Rules of 2018, Section 5 of the Limitation Act shall be applicable to seek condonation of delay in filing replication. I am not in agreement with the submission for the reason I have already

held (*in Odeon(supra)*) that Rule 5 of Chapter VII of the Delhi High Court Rules, as mandatory and the period beyond 45 days cannot be condoned on the basis of the Apex Court judgment in *Union of India v. Popular Constructions (supra)* wherein it was held that words 'but not thereafter' in proviso to Section 34(3) of the Act of 1996 would amount to an express exclusion within the meaning of Section 29 (2) of the Limitation Act, barring the application of Section 5 of that Act.

68. That apart, insofar as Rule 14 and 16 are concerned, I have already reproduced para 12 of *Odeon Builders (supra)* above, wherein I have stated that the 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.

69. Further, even the Supreme Court in *SCG Contracts India Pvt. Ltd. (supra)* rejected a similar argument by holding as under: -

“19. Learned counsel for the respondents then strongly relied upon the inherent powers of the Court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the view that this argument has also no legs to stand on, given the judgment of this Court in Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal,

[1962] Suppl 1 SCR 450. In this judgment, the Court held:

“The suit at Indore which had been instituted later, could be stayed in view of s.10 of the Code. The provisions of that section are clear, definite and mandatory. A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under s.151 is not justified...”

70. Further, when I have already on an interpretation of Rule 4 of Chapter VII of the Rules of 2018 concluded that filing of written statement within a period of 120 days is mandatory, it must follow that the period of 45 days in Rule 5 of Chapter-VII is also mandatory in nature, otherwise, it follows the time limit for filing written statement is mandatory but not for replication; in fact without any time limit. Such cannot be the intention of the Rule making authority. The lesser period for replication is prescribed knowing well, that the same has to be filed by the plaintiff / claimant, who has already taken a stand in the plaint and the purpose of the replication is only to clarify / answer, such averments in the written statement which are at variance with the stand in the plaint.

71. During the course of his submissions, Mr. Mehta, had also advanced a plea that the stage for completion of pleadings will only arise after leave was granted by the Court in the application / Suit preferred under Section 92 of the CPC. In other words, it is his submission occasion has not arisen for the plaintiff to file replication. This plea is clearly an afterthought as during one of the hearings before the learned Joint Registrar time was sought by the plaintiff for filing the replication. Even a prayer in this Chamber Appeal is for condoning delay in filing the replication and taking the same on record. Suffice would it be to state that the said submission made is contrary to the prayer made in this Chamber Appeal.

72. Hence, it must be held that the Ld. Joint Registrar has rightly closed the right of the plaintiff / appellant (in OA 122/2019) to file the replication. Accordingly, the Chamber Appeal is dismissed.

CS(OS) 149/2018 and CS(OS) 182/2019

Be listed under the heading “Direction” before the Court on October 23, 2020 (CS (OS) 149/2018) and on November 2, 2020 (CS(OS) 182/2019) for further proceedings.

V. KAMESWAR RAO, J

AUGUST 06, 2020/ak/jg