

(U.O. 7 R. 11R/W S.151Cpc) Sh. Deepak ... vs Sh. Baij Nath Tara & Ors on 13 April, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(OS) 73/2019, I.A. 1728/2019 (U.O. 39 R. 1 & 2), I.A.
17386/2019 (Delay in Accompanying Appeal), I.A. 17387/2019
(U.O. 7 R. 11r/w S.151CPC)

SH. DEEPAK TARA

..... Plaintiff

Through: Mr. R.K. Bhardwaj, Advocate.

versus

SH. BAIJ NATH TARA & ORS.

..... Defendants

Through: Mr. Rajat Aneja, Advocate with
Ms. Aditi Shastri, Advocate for
D-2 & 4.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

% 13.04.2023 O.A. 150/2019 (O.D. 17-07-2019)

1. The instant chamber appeal has been preferred in respect of an order passed by the Joint Registrar striking off the written statement which has been filed. Undisputedly, the written statement had come to be filed after the maximum period had expired in terms of Rule 4, Chapter VII of the Delhi High Court (Original Side) Rules, 2018.

2. Dealing with the ambit of the aforesaid Rule, the Court had in a recent decision rendered in Charu Agrawal v. Alok Kalia [2023 SCC OnLine Del 1238 considered the judgment rendered by the Division Bench in Ram Sarup Lugani v. Nirmal Lugani [2020 SCC OnLine Del 1353] as well as the subsequent judgment rendered by a learned Judge of the Court in Amarendra Dhari Singh v. R.C. Nursery (P) Ltd. [2023 SCC OnLine Del 84].

3. Upon consideration of the aforesaid judgments, the Court had held as follows: -

"35. It must with due respect be observed that neither Order VIII as originally standing in the Code nor its provisions as adopted by the 2015 Act employ the phrase "but not thereafter". The said expression stands enshrined in both Rules 4 and 5 of 2018 Rules. It was the adoption of the aforesaid phrase which was understood by the

Division Bench in Ram Sarup Lugani to be of critical and vital significance. The Court is further constrained to observe that once the Division Bench had on an extensive review of Rule 5 come to conclude that the usage of the expression was indicative of a terminal point having been constructed, it would have been impermissible to take a contrary view. Ram Sarup Lugani had tested the provisions of Rule 5 based on a textual interpretation, the adoption of a special period of limitation, the recognition of the Order VIII principles not being applicable and even the inherent power not being liable to be invoked in light of the emphatic language of the provision itself. Ram Sarup Lugani had also noticed the earlier Division Bench judgments in DDA v. K.R. Builders Pvt. Ltd., HTIL Corporation B.V v. Ajay Kohli as well as in Print Pak Machinery Ltd. v. Jay Kay Papers Converters. all of which had consistently upheld and recognised the primacy of the Rules over the provisions of the Code. The Court in Ram Sarup Lugani had also duly noticed the judgment of the Supreme Court in Desh Raj. The former decision thus constituted a binding precedent on the scope of the Rules, the mandatory nature of the timelines prescribed thereunder and that neither Order VIII nor the inherent powers of the Court being liable to be invoked to extend the period of limitation as stipulated in Rule 5.

36. While the aforesaid discussion would have been sufficient to lay the controversy at rest, since Amarendra Dhari Singh also proceeds on a perceived distinction between Rules 4 and 5, the Court deems it apposite to observe as follows. As was noticed in the preceding parts of this decision, both Rules employ the phrase "but not thereafter". Both the phrases "not exceeding"

and "but not thereafter" must clearly be accorded due weight and consideration. This was an aspect which was duly noticed in Ram Sarup Lugani.

37. Regard must also be had to the fact that while the penultimate part of Rule 4 is not replicated in Rule 5, that too would be of little significance when one holistically reads Rule

4. It becomes pertinent to note that the obligation to file a written statement in 30 days is originally placed by Rule 2 falling in Chapter VII. Rule 4 deals with the extension of time for filing a written statement. As is manifest from a plain reading of that provision, it confers a power on the Court to statement having not being filed within 30 days if it be satisfied that the Defendant was prevented by sufficient cause and for exceptional and unavoidable reasons to file the same within the prescribed period. Rule 4 then and upon such satisfaction being arrived at empowers the Court to extend the time for filing a written statement by a further period not exceeding 90 days but not thereafter.

38. The penultimate part of Rule 4 talks of the power of the Registrar to close the right of a Defendant to file a written statement if it be found that the same has not been tendered within the extended time. The use of the phrase "extended time"

cannot possibly run beyond the maximum period of 120 days. In any case, the said provision as made in Rule 4 cannot possibly be countenanced or interpreted to recognise the Registrar being empowered to additionally extend time beyond the period of 120 days. The reliance which has been placed on various decisions noticed above and delivered in the context of Order VIII as found in the Code would have to be duly understood bearing in mind what had been held by the earlier Division Benches of our Court in K.R. Builders Pvt. Ltd., HTIL Corporation as well as in Print Pak. The said judgments had consistently held that the Rules as adopted by the Court would clearly prevail over and above those which may find place in the Code. All the four decisions noticed above, had been rendered prior in point of time to Esha Gupta and had neither been noticed nor considered in the said judgment. Ram Sarup Lugani while relying on the aforementioned decisions, had drawn sustenance from those decisions in support of its ultimate conclusion that Order VIII and the principles underlying the same would not apply to Rule

39. The Court also deems it necessary to observe that the Rules directly fell for consideration of the Division Bench in Ram Sarup Lugani as well as the learned Judges who authored Gautam Gambhir and Harjyot Singh. The facial distinction between Rules 4 and 5 which appears to have weighed with the Court in Amarendra Dhari Singh would, in any case, not justify taking a contrary view. The Court notes that both Gautam Gambhir and Harjyot Singh were decisions rendered directly in the context of Rules 4 and 5 as enshrined in Chapter VII. This Court thus finds itself unable to accord an interpretation upon Rule 4 or 5 which would run contrary to what had been held in the earlier decisions and which necessarily bind this Court.

40. In conclusion, this Court is of the considered opinion that Gautam Gambhir, Ram Sarup Lugani and Harjyot Singh are binding precedents on the scope of Rules 4 and 5 as falling in Chapter VII of the Rules. The mere fact that the argument of a perceived discretion vesting in the Registrar in Rule 4 was not specifically raised or addressed would not justify the judgment of the Division Bench being either ignored or doubted. The Court has already noticed the issues that arise out of the judgment of the Division Bench in Esha Gupta. The earlier decisions of the Division Benches of the Court in K.R. Builders, HTIL Corporation, and Print Pak do not appear to have been cited for the consideration of the Bench. Ram Sarup Lugani was a judgment which came to be rendered upon an exhaustive analysis of the earlier precedents rendered in the context of the Rules and the Code, the peremptory language in which Rule 5 stood couched, of how the creation of a special rule relating to limitation would exclude the permissibility of condonation or extensions being granted. While the order of the Division Bench in Tushar Bansal was based on a concession that was made, the judgment in Jamaluddin came to be pronounced with neither side having drawn the attention of the Court to the decision in Ram Sarup Lugani. The said decision proceeded on the principles which underlie Order VIII of the Code and the judgments of the Supreme Court in Kailash and Bharat Kalra rendered in the context of that provision. The Court notes that the adoption of Order VIII principles already stood negated by the earlier Division Benches in K.R. Builders, HTIL Corporation, Ajay Kohli and Print Pak. Those decisions too do not appear to have been cited for the consideration of the Court in Jamaluddin.

41. The Court thus comes to conclude that the principles enunciated in Ram Sarup Lugani would continue to bind and govern the interpretation liable to be accorded to the Rules. The Court has firstly found that there exists no distinction between Rules 4 and 5 which may be countenanced in law as justifying Rule 4 being interpreted or understood differently. In any case the binding decisions rendered on the subject constrain the Court to desist from treading down this path. The Court, bound by the rule of precedent, is of the considered opinion that such a review or a reconsideration would be impermissible in law. Since the Court has found that both coordinate Bench as well as Benches of a larger coram have conclusively settled all issues that stand raised, no reference is also warranted.

42. Reverting to the facts of the present case, the Joint Registrar has categorically found that the summons stood duly served on 21 May 2022. The written statement was originally presented on 13 October 2022 and then refiled on 27 October 2022. The Joint Registrar has also found that the Defendant No. 1 also stood duly served with notice of the application seeking interim injunction via speed post. The judgment of the Court in HT Media Limited v. Brainlink International Inc., and which was cited by learned counsel for the Plaintiff, would appear to additionally shut out the challenge that is raised in the instant Chamber Appeal. The Defendant No. 1 appears to have been duly placed on notice in that respect on 21 April 2022. The written statement clearly came to be filed beyond the maximum period prescribed and when computed either from 21 April 2022 or 21 May 2022. The written statement was admittedly filed beyond the maximum time prescribed by Rule 4. In view of the above, the Joint Registrar was clearly justified in taking the written statement off the record."

4. Accordingly, and for the reasons assigned above, the chamber appeal shall stand dismissed.

CS(OS) 73/2019, I.A. 1728/2019 (U.O. 39 R. 1 & 2), I.A. 17386/2019 (Delay in Accompanying Appeal), I.A. 17387/2019 (U.O. 7 R. 11r/w S.151CPC)

4. List before the concerned Joint Registrar for taking further steps in the suit on 12.07.2023.

YASHWANT VARMA, J.

APRIL 13, 2023 SU