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

**Date of decision: 06<sup>th</sup> April, 2022**

+ CS(COMM) 1052/2018

COSCO INTERNATIONAL PVT. LTD. .... Plaintiff

Through: Mr. Nishant Dutta, Advocate.

versus

JAGAT SINGH DUGAR ..... Defendant

Through: Ms. Renuka Arora, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

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**J U D G M E N T**

**(Judgment released on 20.04.2022)**

**ANUP JAIRAM BHAMBHANI J. (ORAL)**

**O.A. 21/2021**

By way of the present appeal filed under Chapter II Rule 5 of the Delhi High Court (Original Side) Rules, 2018 read with section 151 of the Civil Procedure Code 1908, the defendant/applicant seeks setting aside of order dated 23.10.2020 passed by the learned Joint Registrar, declining to take the defendant's written statement on record.

2. A brief timeline of the dates that are relevant to decide the present O.A. is as follows:

- 22.09.2018: Defendant was served summons in the suit.
- 16.10.2018: Counsel for the defendant appeared and was granted a week's time to file written statement.

- 01.11.2018: The format for affidavit of admission/denial was notified.
  - 16.10.2018: Written Statement was attested by the defendant.
  - 18.01.2019: Written Statement was filed for the first time *vidé* Diary No.83763 of 2019; however, without filing the affidavit of admission/denial of documents along with it.
  - 19.01.2019: Period of 120 days from service upon the defendant expired.
  - 29.05.2019: Affidavit of admission/denial of documents filed.
3. Ms. Renuka Arora, learned counsel appearing for the appellant/defendant, submits that, as is seen from the foregoing timeline, the defendant's written statement duly supported by affidavit was filed within 120 days of the receipt of summons; however, the affidavit of admission/denial of documents, which had also been directed to be filed along with the written statement, was not filed along therewith.
  4. Counsel points-out that in this backdrop, the learned Joint Registrar has taken the view that since there was delay of at least 03 months in filing of the affidavit of admission/denial of documents, over-and-above the prescribed period of 120 days stipulated for filing of the written statement, which period is sacrosanct and cannot be extended, the written statement itself cannot be taken on record.
  5. Attention is drawn in this behalf to the following provisions of law contained in the Code of Civil Procedure, 1908 ('CPC') as amended by the Commercial Courts Act, 2015 and of the Delhi High Court (Original Side) Rules 2018, which are material to the present decision:

### **Order V Rule 1(1) and Proviso, CPC**

*“1. Summons.---- (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:*

*\* \* \* \* \**

*Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, **but which shall not be later than one hundred twenty days from the date of service of summons** and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”*

(emphasis supplied)

### **Order VIII Rules 1 & 10 & Provisos, CPC**

*“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 written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, **but which shall not be later than one hundred twenty days from the date of service of summons** and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”*

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*“10) Procedure when party fails to present written statement called for by Court.—Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.*

**Provided further that no court shall make an order to extend the time provided under Rule 1 of this order for filing of the written statement.**”

(emphasis supplied)

**Chapter IV Rule 3, Delhi High Court (Original Side)**  
**Rules, 2018**

*“Defective pleading/ document.-*

*(a) Upon scrutiny, if any pleading(s)/document(s) are found defective, the Deputy Registrar/ Assistant Registrar, Incharge of the Filing Counter, shall specify the objection(s), a copy of which will be kept for the Court Record, and return for removal of objection(s) and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate. On every re-filing caveat clearance shall be taken. In addition, the party must again serve the corrected copy upon the caveator(s) who had a valid caveat at the time of the first filing.*

*(b) If the pleading(s)/ document(s) are not taken back for removal of objection(s) within 30 days time allowed under sub-Rule (a), it shall be listed before the Court for appropriate orders.*

*The 30 days’ period for the purpose of (a) and (b) above, shall commence from the date when the Registry raises the objections on the pleading/document filed.*

*(c) If the pleading(s)/ document(s) are filed beyond the time allowed under sub-Rule (a) it shall be accompanied with an application for condonation of delay in re-filing.*

(emphasis supplied)

6. Ms. Arora points-out that in the present case, no objections or defects had been pointed-out by the Registry in relation to the *filing* of the written statement; and the defendant came to know that the written statement was not on record only at the hearing before the learned

Joint Registrar on 09.05.2019; whereupon, the defect pointed-out, which related only to non-filing of the affidavit of admission/denial of documents, was cured and the said affidavit was filed within 19 days thereafter. Accordingly, it is submitted that the 30-day aggregate period available for curing of filing defects under Chapter IV Rule 3 of the Delhi High Court (Original Side) Rules, 2018 was also adhered to.

7. Reference is also made to a judgment dated 31.07.2019 rendered by a Co-ordinate Bench of this court in the case of *Cosco (India) Limited vs. Paramsukh Nirman Pvt. Ltd.*, reported as 2019 SCC OnLine Del 9633, which incidentally happens to be a case between parties that are related to the plaintiff and defendant in the present case, where in a similar fact situation, the Co-ordinate Bench has drawn a clear distinction between the '*filing of written statement*' and '*bringing the same on record*', parsing-out the two concepts and holding as under :

*“10. However, under Chapter VII, Rule 3 of the Delhi High Court (Original Side) Rules, once a written statement is filed, the same would not be brought on record without the affidavit of admission/denial. It would be one of the defects in the written statement if it is not accompanied with the affidavit of admission/denial. For re-filing and removing defects, there is a total 30 days' period which is available to parties. Chapter I Rule 14 cannot be used to dispense with the mandatory requirements under the Rules, but only in respect of those rules where it is only a question of practice and procedure. The time of seven days from re-filing within the total period of 30 days would have to be considered as a matter of practice and procedure in the present case inasmuch as there is a fundamental difference between the 'filing of the written statement' along with the affidavit of admission/denial and 'bringing the same on record'. If the affidavit of admission/denial is not accompanying the written statement, however, upon the Registry*

*pointing out the said defect, the same can be cured within 30 days. If the said defect is cured, it cannot be held that the written statement and the affidavit of admission/denial cannot be brought on record.*

(emphasis in original)

8. Accordingly, the essential submission on behalf of the appellant/defendant, is that the written statement in the present case had indeed been *filed* within the time of 120 days prescribed under Order V Rule 1(1) and Order VIII Rule 1 CPC; and the only defect pointed-out subsequently was of not having filed the affidavit of admission/denial of documents alongwith the written statement; which defect was also cured within 19 days of it being pointed-out, well in compliance of the 30 days aggregate time period available for curing such defects under Chapter IV Rule 3 of the Delhi High Court (Original Side) Rules, 2018. It is therefore argued, that the impugned order deserves to be set-aside and the written statement ought to be taken on record.
9. On the other hand, while admitting that the written statement was filed within the prescribed period of 120 days, Mr. Nishant Dutta, learned counsel appearing on behalf of the respondent/plaintiff, submits that such filing was *non-est* and defective.
10. To support his point, Mr. Dutta draws attention to Chapter VII Rules 3 & 4 of the Delhi High Court (Original Side) Rules 2018, which read as follows:

*“3. Affidavit of admission/ denial of documents alongwithwrittenstatement. —Alongwith the written statement, defendant shall also file an affidavit of admission/denial of documents filed by the plaintiff, without which the written statement shall not be taken on record. Alongwith the written statement, the*

*defendant shall be entitled to file applications for interrogatories for examination of the plaintiff together with proposed interrogatories; application for discovery; and application for inspection of such documents.*

*The affidavit referred to in this Rule shall be in accordance with the provisions of Rule 4 of Order XI of the Code, as applicable under the Commercial Courts Act.*

*“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.”*

(emphasis supplied)

11. In support of his submission, Mr. Dutta also draws attention to the following observations made in *Unilin Beheer B.V. vs. Balaji Action Buildwell*, reported as 2019 SCC OnLine Del 8498:

*“31. I thus hold, that in the event of the written statement 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 and on the basis of which admission the Court shall be entitled to proceed under Order VIII Rule 10 of the CPC.”*

(emphasis supplied)

12. In rebuttal, Ms Arora brings the attention of this court to the judgment in *Cosco India* (supra) wherein, while adverting to the essential

principal laid-down in *Unilin Beheer*, the court sets-out the purpose behind the procedural requirement of filing an affidavit of admission/denial of documents. In that case the court held as under:

*“12. Mr. Asheesh Jain, Ld. counsel has rightly pointed out that as per UnilinBeheer B.V. (supra), the timeperiod for filing of admission/denial affidavit which is 120 days is not extendable as per para 32 of the said judgment. The purpose of admission/denial of documents is for a party to take a stand as to whether the documents of the Plaintiff are being admitted or denied. The written statement sets out the fundamental defence of the Defendant, and the affidavit of admission/denial is merely a notation of the stand of the Defendant, which is expected to be contained in the written statement. In the present case, the written statement having been filed within the 120 days' period, the stand of the Defendant in respect of the documents has already come on record. What is only not filed is a chart in the form provided specifically mentioning as to whether there is admission or denial of the documents. In the facts of the present case, the Court does not deem it appropriate to interfere in the order of the Joint Registrar. It is also relevant to point out that the replication has also been filed by the Plaintiff along with the affidavit of admission/denial. Both have been filed on 27<sup>th</sup> July, 2019.”*

(emphasis supplied)

13. Further, learned Counsel for the appellant/defendant has also referred to para 14 of *Cosco India* (supra) wherein the court, while referring to a judgment of the Supreme Court, highlights the obligation of the court to decide disputes on merits and not on default committed by parties. To this effect, the court has held as under:

*“ 14. Under these overall circumstances, this Court holds that the written statement along with the affidavit of admission/denial would be liable to be taken on record as filing, re-filing, etc. are procedural matters which the High Court Registry follows. Broadly if the timelines are adhered to, the Court would not strike out the defence of a party, especially in a suit where recovery of such a huge amount is being sought. Recently in *Robin Thapa v. Rohit**

*Dora [Civil Appeal No. 4507/2019 decided on 8<sup>th</sup> July, 2019] it has been held by the Supreme Court that the endeavour of the Court has to be decide disputes on merits and not on the defaults of the parties. The relevant paragraph reads as under:*

*“8. Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or of the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”*

14. What is noteworthy is that having expressed the opinion in para 31 of *Unilin Beheer B.V.* (supra) as extracted above, even in that case, the Co-ordinate Bench allowed the written statement (to the counter claim) to be taken on record subject to payment of costs; since, the written statement and the affidavit of admission/denial of documents had been filed within the maximum time period specified for the purpose under the law. Accordingly, para 31 as aforesaid must be taken to apply only when the written statement is filed beyond the 120 days period and the defect of not having filed an affidavit of admission/denial of documents is also not cured within the maximum 30 days period prescribed by law from the date that the filing objection is brought to the knowledge of the party.
15. Upon a conspectus of the timelines as set-out above and in light of the provisions of the CPC as amended by the Commercial Courts, Commercial Division & Commercial Appellate Division Of High Courts (Amendment) Act, 2018 read in conjunction with the Delhi High Court (Original Side) Rules 2018, as also the judicial precedents referred to by the parties, this court is of the view that written statement having been *filed* within the statutory period; and the defect

of non-filing of the affidavit of admission/denial also having been cured well within the permissible time period, nothing further stands in the way of the written statement being taken on record.

16. For clarity, it is reiterated that what Order V Rule 1(1) and Order VIII Rule 1 CPC provide is the outer time-limit for *filing* of the written statement of defence. The filling by the defendant of an affidavit of admission/denial of the plaintiff's documents, is a *separate* requirement under Chapter VII Rule 3 and 4 of the Delhi High Court (Original Side) Rules, 2018; and the consequence for not filing such affidavit is that the written statement shall not be *taken on record* and that the plaintiff's documents shall be deemed to be admitted by the defendant. However, the filing of a written statement *within* the prescribed time but *without* an accompanying affidavit of admission/denial of documents, does not amount to *non-est* filing, since *it cannot be said that nothing was filed at all*. It would, however, amount to a defect, that is required to be cured after it is brought to the attention of the party by the Registry. Chapter VII Rule 3 only bars *taking on record* a written statement that is filed without an accompanying affidavit of admission/denial of documents. *Filing* of the written statement and it being *taken on record* are two separate and distinct matters.
17. As discussed above, in the present case, both the written statement as also the affidavit of admission/denial of documents were filled within prescribed, extended time-lines, *except* they were not filed together. Without getting into any other hypothetical questions, which do not

arise in this case, the plaintiff's contention does not commend itself for acceptance.

18. Accordingly, the impugned order dated 23.10.2020 is set-aside.

**ANUP JAIRAM BHAMBHANI, J.**

**APRIL 6, 2022/uj**