2024:DHC:6406

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

\+ **W.P.(C) 15091/2023 & CM APPLs.60290-60292/2023**

MANHAR SABHARWAL ..... Petitioner

Through: Mr.P.S.Bindra, Sr.Advocate with Mr.Arjun Malik, Ms.Vrinda Awasthi, Ms.Aarohi Malik and Mr.Kharanshu Rana, Advocates.

versus

HIGH COURT OF DELHI & ORS. ..... Respondents

Through: Ms. Aditi Mohan, Advocate with Mr. Puru Lekhi, Mr. Divyam Rathi Advocate for R-1. Mr.Rishabh Kapur, Advocate. Ms.Rachita Garg, Advocate with Mr.Agam Rajpupt and Ms.Preeti Chauhan, Advocates for R-2.
Mr.Sourabh Gupta, Advocate with Mr.Puneet Yadav and Mr.Vasu Dev, Advocates for R-4 to 7.

\+ **W.P.(C) 15124/2023 & CM APPLs.60438-60440/2023**

CHIRAG SHARMA ..... Petitioner

Through: Mr. Manish Kaushik, M.r Mishal Johari, Mr. Ajit Singh Joher, Mr. Anubhav Gupta, Ms. Meet Shokeen, Mr. Aryan Pandey, Advs.

versus

HIGH COURT OF DELHI & ORS. ..... Respondents

Through: Ms.Aditi Mohan, Advocate with Mr.Puru Lekhi, Mr. Divyam Rathi Advocate for R-1.

% ***Date of Decision: 23rd August, 2024***

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J:

W.P.(C) 15091/2023 & CM APPLs.60290-60292/2023
W.P.(C) 15124/2023 & CM APPLs.60438-60440/2023

INTRODUCTION:

1. The present petitions challenge the constitutionality of Rule 4, Chapter VII of the Delhi High Court (Original Side) Rules, 2018 ("DHC Original Side Rules"), which mandates a strict timeline of 120 days for filing of written statement even in non-commercial matters. The challenge is essentially on the ground that the said Rule creates an unfair discrimination and unequal treatment amongst various litigants in the territory of Delhi, merely on the basis of pecuniary jurisdiction, as non-commercial matters in District Courts are governed by Order VIII Rule 1 of the Code of Civil Procedure, 1908 ("CPC"), wherein, discretion vests with the court to condone the delay in filing written statement in non-commercial matters beyond 120 days. Since it is the case of the petitioners that unfair discrimination and unequal treatment is meted to litigants, wherein, delay beyond 120 days in filing written statement in non-commercial matters, is not condoned on account of Rule 4, Chapter VII of DHC Original Side Rules, in cases filed before this Court, the present petitions have been filed, to declare the said Rule as *ultra vires* and unconstitutional.

SUBMISSIONS ON BEHALF OF PETITIONERS:

2. On behalf of the petitioners, the following submissions have been made:

2.1 The impugned Rule takes away discretion in a Judge of this Court to condone delay in filing written statement, which is an anomaly that causes

hardships to litigants, who otherwise, have an excellent case on merits, but, are prevented from just causes and situations beyond their control, to present written statement within prescribed time.

2.2 The impugned Rule is contrary to Articles 14, 141, 142 and 144 of the Constitution of India. Further, it is beyond the competence of this Court in view of Clause 13 of List III – Concurrent List of Seventh Schedule of the Constitution of India, read with Sections 122 to 128 of the CPC.

2.3 Clause 13 of List III – Concurrent List of Seventh Schedule of the Constitution of India provides legislative competence to Union and States for framing laws relating to civil procedure, including all matters that are included in the CPC at the commencement of the Constitution. The power of High Court to make Rules under Section 129 of CPC is confined to what a court can do in a particular suit, while exercising Original Civil jurisdiction. The impugned Rule, in the present form, could have been made in terms of Sections 122 to 128 of CPC. Resort to Section 129 CPC may not be proper in view of explicit mechanism under Sections 122 to 128 CPC.

2.4 The Rule making power with a High Court cannot extend to make Rules that restrict time provided in a Statute. The CPC prescribes time to file written statement, which is permissible to be extended by a Judge hearing the matter.

2.5 Sections 124 to 126 of CPC require previous approval of Government of the State or Central Government, which provide that Rules made under the said provisions of CPC, will be subject to the previous approval of the Government. Such Rules are required to be published under Section 127. The Rules, even under Section 122 or 129, can only be procedural. Removal of discretion from a Judge altogether, may not be procedural.

2.6 Even if the impugned Rule could have been made under Section 129

CPC, it should still have been subject to procedures and pre-requisites, as provided under Sections 122 to 128 of CPC.

2.7 The impugned Rule in the present form is beyond the competence of this Court, in-as-much as it takes away discretion of a Judge of this Court to condone the delay in filing written statement. It makes the said Rule substantive, and it no longer remains procedural.

2.8 The said Rule has been framed under Section 129 CPC, read with Section 7 of Delhi High Court Act, 1966 ("DHC Act"), which only permits framing of procedural Rules. When powers are only procedural, no substantive rights can be inferred. There is no legislation permitting the Court to take away the judicial discretion in a Judge of a High Court.

2.9 Taking away the discretion from a Judge conferred upon him by a statute, i.e., the CPC, to condone delay, would be impermissible by way of DHC Original Side Rules.

2.10 The DHC Original Side Rules, as they exist in the present form, are discriminatory and violative of Article 14, in as much as the power of a Judge to take written statement on record post 120 days, is retained for litigants in District Courts of Delhi, where the DHC Original Side Rules, do not apply. There is no rationale for taking away such discretion only from the High Court Judge for litigants before the High Court, who differ only on pecuniary jurisdiction with litigants in Subordinate Courts.

2.11 The impugned Rule, in-as-much as it takes away discretion of Judge of this Court to condone delay in filing written statement, is excessive of law laid down by Supreme Court under Articles 142 and 144 of the Constitution of India. The amendments in Order VIII Rule 1 reserve the discretion with the Court to condone delay.

2.12 The following judgments have been relied upon by the petitioners:

I. ***Raj Kumar Yadav Vs. Samir Kumar Mahaseth & Others, (2005) 3 SCC 601***

II. ***Vinod Seth Vs. Devinder Bajaj and Another, (2010) 8 SCC 1***

III. ***State of Uttar Pradesh & Others. Vs. M/s Satish Chand Shivhare and Brothers, 2022 SCC OnLine SC 2151***

IV. ***Vinay Kumar GB Vs. Sudhir Kumar and Another., 2023 SCC OnLine Del 968***

V. ***Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344***

VI. ***Kailash Vs. Nanhku & Others, (2005) 4 SCC 480***

VII. ***Atcom Technologies Limited Vs. Y.A. Chunawala and Company and Others, (2018) 6 SCC 639***

VIII. ***Desh Raj Vs. Balkishan, (2020) 2 SCC 708***

IX. ***Sardar Amarjit Singh Kalra (Dead) by LRs. and Others. Vs. Pramod Gupta (SMT)(Dead) by LRs. and Others., (2003) 3 SCC 272***

X. ***Sambhaji & Ors. Vs. Gangabai & Ors., (2008) 17 SCC 117***

SUBMISSIONS ON BEHALF OF RESPONDENTS:

3. On behalf of respondents, the following submissions have been made:

3.1 The DHC Original Side Rules are traced to Section 7 of the DHC Act. Section 7 of the said Act has not been challenged. Therefore, Rule 4 is not open to challenge on the ground of *ultra vires*.

3.2 Section 129 of the CPC specially refers to the Rules framed by a High Court by overriding provisions of the CPC. Section 129 CPC is non-obstante.

3.3 The impugned Rule is protected, even if the same is inconsistent or contrary to the CPC, as the same has an overriding effect.

3.4 The judgment of Supreme Court in the case of ***Kailash Vs. Nanhku & Others (supra)*** was in the context of interpretation of Order VIII Rule 1 of CPC.

3.5 Under Section 129 CPC, the Rules of the High Court prevail over other provisions of the CPC. Therefore, Rule 4 cannot be challenged on the ground, being contrary to the judgment of the Supreme Court *qua* Order VIII Rule 1 CPC.

3.6 On behalf of the respondents, following judgments have been relied upon:

i. ***Ram Sarup Lugani (Dead) & Anr. Vs. Nirmal Lugani & Ors., Order dated 28.06.2021, SLP (C) 15142/2020***
ii. ***Iridium India Telecom Ltd. Vs. Motorola Inc., (2005) 2 SCC 145***
iii. ***M/S. Print Pak Machinery Ltd. Vs. M/S. Jay Kay Papers Converters, 1979 SCC OnLine Del 123***
iv. ***Akash Gupta Vs. Frankfinn Institute of AIR Hostess Training, 2006 SCC OnLine Del 66***
v. ***Ram Sarup Lugani and Another Vs. Nirmal Lugani and Others, 2020 SCC OnLine Del 1353***
vi. ***Gautam Gambir Vs. Jai Ambay Traders and Others connected matter, 2020 SCC OnLine Del 2621***

FINDINGS AND ANALYSIS:

4. We have heard learned counsel for the parties and have perused the record.

5. At the outset, this Court notes that the DHC Original Side Rules have been framed by this Court in terms of the authority, as vested under Section 129 of the CPC, which reads as under:

> *"**129. Power of High Courts to make rules as to their original civil procedure** – Notwithstanding anything in this Code, any High Court [not being the Court of a Judicial Commissioner] may make such rules not inconsistent with the Letters Patent [or order] [or other law] establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code."*

6. Reading of the aforesaid Section makes it clear that the said Section contains a *non-obstante* clause, meaning thereby, that the provisions, as contained in the said Section, will have an overriding effect on other provisions of the CPC. The effect of *non-obstante* clause is to give the enacting part of the Section, an overriding effect over the provisions of the Act, in case of any conflict. Thus, in the case of ***Iridium India Telecom Ltd. Vs. Motorola Inc.***[1], it has been held as under:

> *"xxx xxx xxx*
>
> ***13. Section 129 begins with a non obstante clause and seems to suggest something to the contrary. At least as far as chartered High Courts are concerned, Section 129 seems to invest them with the power to make rules with regard to the regulation of their own procedure, which may be inconsistent with CPC itself**, as long as such rules are consistent with the Letters Patent establishing the High Courts. The section also ends with the words "nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code".*
>
> *xxx xxx xxx*
>
> ***33.** There cannot be any doubt about the principle of harmonious construction. However, what confronts us is not a mere question of two independent provisions of CPC being in conflict. The provisions of CPC, which we have extracted, and the historical development of the different sections to which we have referred, do not suggest a situation of mere conflict. **They seem to suggest that, throughout, the legislature had made a distinction between the proceedings in other civil courts and the proceedings on the original side of the chartered High Courts. This distinction was made for good historical reasons and it had continued unabated, as we have noticed, through the consolidating Acts, and continued unaffected even through the last amendment of CPC in the year 2002. In the face of this body of evidence, it is difficult to accede to the contention of the appellant***

[1] ***(2005) 2 SCC 145***

that the force of the non obstante clause is merely declaratory and not intended to operate as a declared exception to the general body of CPC.

34. *After noticing the observations made in Aswini Kumar Ghosh [(1952) 2 SCC 237 : 1953 SCR 1, p. 24 : AIR 1952 SC 369, p. 377] and Dominion of India v. Shrinbai A. Irani [(1955) 1 SCR 206 : AIR 1954 SC 596] this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447, pp. 477-78, paras 67-68] observed thus, in the context of construction of a non obstante clause:*

"67. ***A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment****. See in this connection the observations of this Court in South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum [(1964) 4 SCR 280: AIR 1964 SC 207].*

68. It is well settled that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal."

35. *Again in Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi [(1996) 4 SCC 76, p. 102, para 77] this Court observed:*

*"77. '****Non obstante clause is sometimes appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision or Act mentioned in that clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provision indicated in the non obstante clause will not be an impediment for the operation of the enactment.****' (See Union of India v. G.M. Kokil [1984 Supp SCC 196 : 1984 SCC (L&S) 631]*

, Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447, pp. 477-78, paras 67-68] , R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] , G.P. Singh's Principles of Statutory Interpretation.)"

36. *Reference was made to A.G. Varadarajulu v. State of T.N. [(1998) 4 SCC 231: AIR 1998 SC 1388] at para 16. This judgment merely followed the observations made in Aswini Kumar [(1952) 2 SCC 237: 1953 SCR 1, p. 24: AIR 1952 SC 369, p. 377] and Madhav Rao Scindia v. Union of India [(1971) 1 SCC 85 at p. 139] . There is no doubt that where the non obstante clause is widely worded, "a search has, therefore, to be made with a view to determining which provision answers the description and which does not".* ***The historical development of the law suggests that the non obstante clause in Section 129 is intended to bypass the entire body of the Code so far as the rules made by the chartered High Court for regulating the procedure on its original side are concerned.***

37. *The observations of this Court in R.S. Raghunath [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] in paras 11 and 12 (SCC and AIR) were pressed into service. These paragraphs merely reiterate and follow the observations made in Aswini Kumar Ghosh [(1952) 2 SCC 237 : 1953 SCR 1, p. 24 : AIR 1952 SC 369, p. 377] , Dominion of India [(1955) 1 SCR 206 : AIR 1954 SC 596] , Union of India v. G.M. Kokil [1984 Supp SCC 196 : 1984 SCC (L&S) 631] as well as the observations made in Chandavarkar Sita Ratna Rao [(1986) 4 SCC 447, pp. 477-78, paras 67-68] . Finally, in R.S. Raghunath [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] at SCC p. 347 in para 12, the words of Chinnappa Reddy, J. [**Ed.**: As per his observations in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424 at p. 450, para 33.] were quoted:*

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a

statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."
xxx xxx xxx

39. Taking into account the extrinsic evidence i.e. the historical circumstances in which the precursor of Section 129 was introduced into the 1882 Code by a specific amendment made in 1895, we are of the view that the non obstante clause used in Section 129 is not merely declaratory, but indicative of Parliament's intention to prevent the application of CPC in respect of civil proceedings on the original side of the High Courts.

xxx xxx xxx"

(Emphasis Supplied)

7. With regard to operation of a *non-obstante* clause, Supreme Court in the case of ***Union of India and Another Vs. G.M. Kokil and Others[2],*** has held as under:

"xxx xxx xxx

11. *.....**It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions**.....*

xxx xxx xxx"

(Emphasis Supplied)

8. Considering the aforesaid discussion, it is evident that Section 129 CPC, which is couched in a *non-obstante* clause, will have an overriding effect over other provisions of the CPC, in case of any conflict. Thus, the DHC Original Side Rules, which have been enacted in terms of the authority conferred by Section 129 CPC, will essentially and necessarily have an overriding effect over other provisions of the CPC. In case of any conflict, the DHC Original Side Rules shall prevail.

9. Similarly, a Full Bench of this Court in the case of ***M/S. Print Pak***

[2] ***1984 Supp SCC 196***

Machinery Ltd. Vs. M/S. Jay Kay Paper Converters[3], held that in case of any inconsistency, the DHC Original Side Rules shall prevail over the CPC. It has been held that Section 129 CPC, subordinates the other provisions of the CPC, to Rules made by a High Court for its Original Side. Further, the Rules made by High Court to regulate its practice and procedure, are in the nature of Special Law, and have precedence over the CPC, which is a General Law. Thus, it has been held, as under:

> *"xxx xxx xxx*
>
> ***8.*** *I think, the question is really concluded by section 129 of the Code. It reads:*
>
> > *"Notwithstanding anything in this Code, any High Court not being the Court of a Judicial Commissioner may make such rules not inconsistent with the Letters Patent or order or other law establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code."*
> >
> > *No doubt the closing words will not save the Original Side Rules of this Court, as they were not 'in force at the commencement' of the Code.* ***But, the opening words 'Notwithstanding anything in this Code' are self-effacing, and subordinate the Code to rules made by a High Court for its original side at any time. The cumulative effect of those two parts of the section is to leave untouched the original rules of a High Court whether framed before or after 1908. Since section 2(1) says that the '"Code" includes rules', the original side rules will prevail both over the body of the Code and the First Schedule****. Therefore, the statement in Order 37 rule 1(a) that 'This order shall apply to……..High Courts' must be read subject to section 129.*
>
> *xxx xxx xxx*
>
> ***11. The conclusion thus drawn from section 129 can also be reached from section 4(1) of the Code, though not in the manner that was suggested in argument. Section 4(1) of the Code provides that****:*
>
> > *'****In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or***

[3] ***1979 SCC OnLine Del 123***

power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.*'*

It has been held that rules made by a High Court or the Supreme Court to regulate their procedure and practice are a 'special law' as they deal with a particular subject*: The Union of India v. Ram Kanwar, AIR 1962 SC 247 (11); Punjab Co-operative Bank Ltd., Lahore v. Official Liquidators, Punjab Cotton Press Co. Ltd. (in liquidation), AIR 1941 Lahore 257 (12) and The Deities of Sri Audinarayana Swamy and Anjenayaswami Temples of Donepudi v. R. Hanumacharyulu, AIR 1962 AP 245 (13). Nevertheless, the Original Side Rules of Delhi High Court would not be protected by section 4(1) of the Code. Only those 'special laws' are saved which are 'now in force', which means 1908. But, they are a 'special form of procedure prescribed' by or under a law 'for the time being in force', and would be covered on that account.* ***There is no 'specific provision to the contrary' and the result is that nothing in the Code 'shall be deemed to limit or otherwise affect' anything in the Original Side Rules****.*

xxx xxx xxx

13. *In that case the question was whether sub-rule (2) added to Order 6 rule 5 by the High Court of Bombay, in exercise of the power under section 122 of the Code, applied to the original side. It is not clear from the judgment whether the original side rules in Bombay contain a rule like Rule 19 of Chapter 1 in Delhi making the Civil Procedure Code applicable 'Except to the extent otherwise provided'. If there be such a rule, then the sub-rule added to Order 6 rule 5 would apply to the original side by virtue thereof. However, section 117 of the Code produces the same result. It makes the provisions of the Code applicable to High Courts save as provided in 'Part IX or X or in rules'. Therefore, the sub-rule added to Order 6 rule 5 would apply to the original side because of this section, and not because section 122 made it directly applicable to the original side. Of course, if there were a contrary rule in the original side rules, that would prevail. For these reasons, I do not agree with all that was said about section 122 in that authority. This also means that the reference to section 122 in the Preamble to the Original Side Rules in force in Delhi is wrong and unnecessary.*

xxx xxx xxx

15. *Section 97(1) of the amending Act was intended to disencumber the Code of accretions gathered over the years due to amendments made by the State Legislatures and High Courts, except to the extent that they were consistent with the Code as amended by the Act. In other words, the purpose of the amending Act was to present a renovated Code as the new starting point, as had also been done in 1908. It was not the purpose to repeal all other and independent laws*

pertaining to procedure. ***Historically, the original side of a High Court has always been treated on a special footing. As section 129 shows, it has always been governed by its own rules in preference to those in the Code. The amending Act contains no indication that it was intended to depart from that position. Had there been any such intention, the obvious course was to amend section 129. But it has remained fully intact. So has section 4 of the Code, and even section 122****.*

16. Accordingly, I would hold that, in the event of inconsistency, the Original Side Rules prevail on the original side of this Court and not the Civil Procedure Code; and, the amending Act of 1976 has made no difference in this respect*.*

xxx xxx xxx"

(Emphasis Supplied)

10. In Chapter VII, Rule 4 of the DHC Original Side Rules, the phrase 'but not thereafter' is used, to stipulate that the period of filing written statement may be extended beyond the period of thirty days, for a further period not exceeding ninety days, but not thereafter. The phrase 'but not thereafter', as used in various Legislations, and interpretation of the said phrase, as given in various judgments, have been dealt with by the Division Bench of this Court in the case of ***Ram Sarup Lugani and Another Vs. Nirmal Lugani and Others***[4], wherein, it has been held, as under:

"xxx xxx xxx

15. *This is not the first time that the phrase, "but not thereafter" have been used in the statute. The said preemptory words have been used in other provisions that have come up for interpretation before the Supreme Court. In Union of India v. Popular Construction Co., reported as (2001) 8 SCC 470, the words "but not thereafter" were used in relation to the power of the court to condone the delay in challenging the award beyond the period prescribed under Section 34 of the Arbitration and Concilliation Act, 1996 and the Supreme Court observed as below:—*

"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

[4] ***2020 SCC OnLine Del 1353***

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.

16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. ***Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that***

"where the time for making an application to set aside the arbitral award under Section 34 has expired … the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the court*".*

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). ***Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court****. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act."*

16. *In Singh Enterprises v. Commissioner of Central Excise, Jamshedpur, reported as (2008) 3 SCC 70, on interpreting Section 35 of the Central Excise Act, which contains similar provisions, the Supreme Court has observed as under:*

"8. The Commissioner of Central Excise(appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. ***The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation***

Act") can be available for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision of order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section(1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. *Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."*

17. *After referring to the above decision, in Commissioner of Customs and Central Excise v. Hongo India Private Limited, reported as (2009) 5 SCC 791, the Supreme Court went on to observe as under:*

*"**30.** In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.*

X X X X

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning

the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

X X X X

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.*"*

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19. *In P. Radhabai v. P. Ashok Kumar, reported as (2019) 13 SCC 445, while construing the phrase, "but not thereafter" used in the proviso to sub section (3) of Section 34 of the Arbitration and Concilliation Act, the Supreme Court held thus:*

*"**32.4.** The limitation provision in Section 34(3) also provides for condonation of delay. Unlike Section 5 of the Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause.* ***The crucial phrase "but not thereafter" reveals the legislative intent to fix an outer boundary period for challenging an award****.*

X X X X

33.2. *The proviso to Section 34(3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates,* ***"but***

***not thereafter**". The use of the phrase "but not thereafter" shows that the 120 days' period is the outer boundary for challenging an award. If Section 17 were to be applied, the outer boundary for challenging an award could go beyond 120 days. The **phrase "but not thereafter" would be rendered redundant and otiose. This Court has consistently taken this view that the words "but not thereafter" in the proviso of Section 34(3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt.** (State of H.P. v. Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605], Assam Urban Water Supply & SewerageBoard v. Subash Projects & Mktg. Ltd. [Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624 : (2012) 1 SCC (Civ) 831] and Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel [Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC (Civ) 141].)*

***34.** In our view, the aforesaid inconsistencies with the language of Section 34(3) of the Arbitration Act tantamount to an "express exclusion" of Section 17 of the Limitation Act."*

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***21. <u>A conspectus of the decisions referred to above leaves no manner of doubt that where ever the phrase "but not thereafter" has been used in a provision for setting a deadline, the intention of the legislature is to treat the same as a preemptory provision</u>**. Thus, if Rule 15 of the DHC Rules mandates filing of a replication within a period of 30 days reckoned from the date of receipt of the written statement, with an additional period of 15 days provided and that too only if the court is satisfied that the plaintiff has been able to demonstrate that it was prevented to do so by sufficient cause or for exceptional and unavoidable reasons, can the time for filing the replication be extended for a further period not exceeding 15 days in any event, with costs imposed on the plaintiff. The critical phrase "but not thereafter" used in Rule 15 must be understood to mean that even the court cannot extend the period for filing the replication beyond the outer limit of 45 days provided in the DHC Rules. Upon expiry of the said period, the plaintiff's right to file the replication would stand extinguished. **<u>Any other meaning sought to be bestowed on the above provision, would make the words "but not thereafter", inconsequential</u>**.*

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***31. <u>In view of the aforesaid discussion, it is held that in case of any inconsistency, the provisions of the Delhi High Court (Original Side) Rules, 2018 will prevail over the Civil Procedure Code</u>**. The inherent powers contemplated in Rule 16 are not to be exercised to overcome*

> *the period of limitation expressly prescribed in Rule 5 for filing the replication. Nor can Rule 5 be circumvented by invoking any other provision or even the inherent powers of the court, contrary to the scheme of the Rules.* ***The phrase, "but not thereafter" used in Rule 5 makes it crystal clear that the Rule is mandatory in nature and the court cannot permit the replication to be taken on the record after the plaintiff has exhausted the maximum prescribed period of 45 days. Any other interpretation will result in causing violence to the DHC Rules****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

11. Thus, it is manifest that the phrase 'but not thereafter', provides for an action, which is mandatory in nature.

12. While holding that DHC Original Side Rules, being Special Rules, shall prevail over the provisions of the CPC, which are General in nature, in the aforesaid judgment of ***Ram Sarup Lugani (supra)***, it has been observed, as under:

> *"xxx xxx xxx*
>
> ***24. A reading of the relevant provisions of the DHC Rules shows that it is a special provision within the meaning of Section 29(2) of the Limitation Act (for short 'the Act'), that contemplates that where any special or local law prescribes a time limit that is different from the one provided for under the Limitation Act, 1963, then Section 4 to Section 14 of the Limitation Act, 1963 would be expressly excluded. It is well settled that even in a case where the special law does not exclude the provisions of Section 4 to Section 14 of the Limitation Act, 1963 by an express provision or reference, then too, if it is clear from the mandate or the language of the statute, the scheme of the special law will exclude the application of Section 4 to Section 14 of the Limitation Act, 1963****. (Ref: Hukumdev Narain Yadav v. Lalit Narain Mishra, reported as (1974) 2 SCC 133).*
>
> ***25. It is equally well settled that when the provision of a law/statute prescribes specific provisions, then those provisions cannot be sidestepped or circumvented by seeking to invoke the inherent powers of the court under the statute****. The principles required to be followed for regulating the inherent powers of the court in the context of applying the provisions of Section 151 CPC, have been highlighted in State of Uttar Pradesh v. Roshan Singh, reported as (2008) 2 SCC 488, wherein the Supreme Court has observed as under:*

> *"**7.** The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. **If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure.** The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.*
>
> ***8.** The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it. **If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act.**"*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

13. It is to be noted that the DHC Original Side Rules are traceable to Section 7 of the DHC Act, which reads as under:

> *"**7. Practice and procedure in the High Court of Delhi**.—Subject to the provisions of this Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, with the necessary modifications, apply in relation to the High Court of Delhi and accordingly the High Court of Delhi shall have all such powers to make rules and orders with respect to practice and procedure as are immediately before the appointed day exercisable by the High Court of Punjab and shall also have powers to make rules and orders with respect to practice and procedure for the exercise of its ordinary original civil jurisdiction:*

Provided that any rules or orders which are in force immediately before the appointed day with respect to practice and procedure in the High Court of Punjab shall, until varied or revoked by rules or orders made by the High Court of Delhi, apply with the necessary modifications in relation to practice and procedure in the High Court of Delhi as if made by that High Court."

14. Section 7 of the DHC Act confers authority on the High Court to make Rules with respect to practice and procedure for the exercise of its original civil jurisdiction. The words 'practice and procedure' have a very wide connotation, and will include the power to regulate and specify the method, by which the court will conduct its proceedings. *(See:* ***Akash Gupta Vs. Frankfinn Institute of Airhostess Training, 2006 SCC OnLine Del 66****)*

15. The position that emerges is that Rule 4 of Chapter VII of DHC Original Side Rules, has been framed under Section 129 of the CPC and Section 7 of the DHC Act. Section 129 of the CPC empowers the High Court to regulate its own procedure in exercise of its civil jurisdiction. Section 7 of the DHC Act further empowers this Court to make Rules and Orders with respect to practice and procedure for exercise of its ordinary original civil jurisdiction. The DHC Original Side Rules, being special law, will prevail over the CPC, and have an overriding effect over the general provisions of the CPC.

16. The plea raised by the petitioners regarding Rule 4, Chapter VII of the DHC Original Side Rules, being discriminatory in nature, is totally misplaced. The very distinction, between procedures of the High Court and Civil Court, is found ingrained in Section 129 of the CPC. The said Section recognizes special Rules for the High Court, and thereby, itself makes a distinction between High Court and Civil Court. When the CPC itself envisages distinction in the practice and procedure between High Court and Civil Court, the Rules framed thereunder, cannot be challenged on the anvil

of discrimination.

17. The High Court is within its authority and jurisdiction to frame Rules of practice and procedure as to its original civil procedure. The very fact that such an authority has been conferred on the High Court, and such a provision exists in the CPC, which confers such authority on the High Court, envisions difference in the Rules of practice and procedure between a High Court, and a Civil Court.

18.1 The reliance by the petitioners on the judgment in the case of ***Kailash Vs. Nanhku (supra)***[5], is totally misplaced. The said judgment was in the context of interpretation of Order VIII Rule 1 of CPC. Rule 4, Chapter VII of DHC Original Side Rules was not a subject matter of discussion in the said judgment. Even otherwise, Rule 4, Chapter VII of DHC Original Side Rules itself was introduced only in the year 2018. Consequently, in view of Section 129 of CPC, the Original Side Rules of the High Court prevail over the provisions of the CPC.

18.2 The position in the present case is totally different as Section 129 of CPC, which empowers the High Court to frame its own Original Side Rules, is a *non-obstante* clause and itself excludes the operation of other provisions of the CPC, while conferring jurisdiction on the High Court to frame its Rules. Thus, in case of any inconsistency between the provisions of the DHC Original Side Rules and the provisions of the CPC, the DHC Original Side Rules shall prevail. The judgment relied upon by the petitioners is not applicable to the facts and circumstances of the present cases.

18.3 Therefore, Rule 4 Chapter VII of DHC Original Side Rules cannot be challenged on the ground of being contrary to the aforesaid judgment, which was delivered in the context of Order VIII Rule 1 CPC. The amended

[5]***(2005) 4 SCC 480***

provisions of Order VIII Rule 1 CPC, would not apply to the suits on the Original Side of the High Court, and such suits would continue to be governed by the High Court Original Side Rules.

19. Reliance by the petitioners on the judgment in the case of ***Raj Kumar Yadav (supra)***[6], to contend that statutory period of limitation cannot be taken away by the Rules framed by the High Court governing its procedure, is again, misconceived. The said judgment was rendered in an Election Petition, wherein, the High Court Rules in the said case stipulated that an Election Petition could be filed only in the open court. In the said case, the Election Petition was presented ten minutes after the Judge had retired to his chamber. The Representation of People Act, 1951 stipulated limitation under Section 81 of the said Act, to expire on the 45th day from the date of election. The word 'day' was interpreted to cover a period of twenty four hours, to include period till midnight. It was in this context that it was held that the limitation period would continue till midnight of the last day, and non-acceptance of the Election Petition on the ground of its presentation after the Judge had risen for the day, was rejected.

20. Similarly the judgments in the cases of ***Salem Advocate Bar Association (supra)***[7] ***and Sambhaji (supra)***[8], are not applicable to the present cases, as the said judgments were dealing with Order VIII Rule 1 of CPC. As discussed in the preceding paragraphs, the operation of the said provision to Original Side of this Court, stands excluded and the DHC Original Side Rules, shall operate to govern the practice and procedure of the Original Side of this Court.

21. Section 129 CPC expressly gives the power to the High Court to make

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[6] ***(2005) 3 SCC 601***
[7] ***(2005) 6 SCC 344***
[8] ***(2008) 17 SCC 117***

Rules, notwithstanding the provisions of the CPC, meaning thereby, the High Court is in its authority to frame Rules that may be contrary to other provisions of the CPC. Therefore, relying on judicial interpretations of the provisions of the CPC, to challenge Rule 4 Chapter VII of DHC Original Side Rules, is totally fallacious.

22. The petitioners have not challenged Section 129 CPC, which refers to the Rules framed by a High Court, having overriding effect over the provisions of the CPC, in view of the *non-obstante* clause contained therein. The petitioners have also not challenged Section 7 of the DHC Act that empowers the High Court to make Rules and Orders, with respect to Practice and Procedure for exercise of its ordinary original civil jurisdiction. Thus, when plenary powers of this Court to frame the Original Side Rules, are recognized and accepted, the petitioners have not been able to establish any case that the exercise of such powers by this Court, and the Rules framed thereunder, are unconstitutional in any manner.

23. For the foregoing reasons, the present petitions are held to be devoid of any merits. Accordingly, the same are dismissed, along with the pending applications.

MINI PUSHKARNA, J

ACTING CHIEF JUSTICE

AUGUST 23, 2024/au/ak