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

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**Judgment Reserved on: 24.01.2023**  
**Judgment Pronounced on: 03.07.2023**

+ **O.A. No. 33/2020 in CS (COMM) 63/2019**

ODEON BUILDERS PVT. LTD. .... Plaintiff

Through: Mr. Karvnesh Tandon and Rahul Chauhan, Advs.

versus

NBCC (INDIA) LIMITED FORMERLY KNOWN AS NATIONAL BUILDINGS CONSTRUCTION CORPORATION LTD.

.... Defendant

Through: Mr. Jay Savla, Sr. Adv. with Ms. Shilpi Chowdhary, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE SACHIN DATTA**

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

**SACHIN DATTA, J.**

**O.A No. 33/2020**

1. The present appeal has been preferred by the defendant/appellant under Rule 5 Chapter II of the Delhi High Court (Original Side) Rules, 2018<sup>1</sup> against the order dated 30.01.2020 passed by the learned Joint Registrar (Judicial). The said order reads as under:-

*“In compliance of previous directions, replication and affidavit of admission/denial of document has been filed on behalf of plaintiff. Cost has not deposited by defendant till date. Even the appeal filed by defendant has been dismissed as withdrawn on 16.01.2020. But cost*

<sup>1</sup> “High Court Rules”



*has not been deposited till date. In these circumstances written statement shall be taken off the record.*

*List the matter before Hon'ble Court on 28.02.2020 for further directions.”*

2. The factual background in the context of which the present appeal has been filed is briefly enumerated hereunder:-

i. The plaintiff has preferred this suit for recovery of Rs.5,42,75,455/- along with 18% interest. Written statement was admittedly filed by the defendant/appellant on 01.07.2019 along with a condonation of delay application.

ii. *Vide* order dated 19.07.2019 submission of the learned counsel for the plaintiff was recorded to the effect that the plaintiff has no objection in case the delay in filing the written statement is condoned subject to cost/s being imposed upon the defendant. The said order reads as under:-

*“It is submitted by learned counsel for the defendant that written statement, affidavit of admission/denial and an application for condonation of delay and documents had also been filed but the same are not on record. During hearing learned counsel for the plaintiff submitted that he has no objection in case delay in filing the written statement is condoned subject to heavy cost as the copy of them had already been received by learned counsel for the plaintiff, which is counter opposed.*

*Heard. Perused.*

*Written statement, application for condonation of delay and documents are not on record. However, affidavit of admission/denial is on record.*

*Learned counsel for the defendant is directed to get the written statement, application for condonation of delay and documents placed on record within three days.*

*Put up for further proceedings on 26.07.2019.”*

iii. *Vide* order dated 18.11.2019, it was *inter alia* held as under:-



*“13. Since the written statement has been filed within 120th day, the last day of the limitation for filing the written statement from the date of service i.e. 28.02.2019, hence I am of the further considered view that the end of justice would be met in case the opportunity to contest the suit on merit is given to the defendant and the present application may be considered to be allowed subject to heavy cost as the defendant is a Government public sector company, so that the plaintiff can be compensated for delay and also in view of submission made on 19.07.2019, when it was submitted by learned counsel for the plaintiff that he has no objection, in case the delay in filing the written statement is condoned subject to heavy costs but subsequently contested the present application and filed reply.*”

*14. So far as the contention of the defendant in respect to the incorrect observation made on 12.04.2019 is not tenable as the same is contrary to the records of the court, according to the report of service of summons through speed post, the defendant has been served on 28.02.2019, hence request/submission qua incorrect observation made in the order sheet dated 12.04.2019 is found without merit, and submission to consider 18.03.2019 as the date of service of summons upon the defendant cannot be considered.*

*15. In view of the above discussion, in the interest of justice, the present application is allowed and delay of 120th day in filing the written statement is condoned subject to cost of Rs.1,00,000/- to be paid by the defendant to the plaintiff within one month.”*

iv. Thereafter, a chamber appeal was filed by the defendant being O.A. No. 5/2020 against the order dated 18.11.2019 to the extent that the costs were imposed vide the said order upon the defendant. The said chamber appeal came to be withdrawn on 16.01.2020. Thereafter, the impugned order dated 30.01.2020 came to be passed.

3. The primary ground urged by the defendant/appellant in support of the present appeal is that the time period prescribed vide order dated 18.11.2019 for payment of costs could not be adhered to on account of certain internal procedures that were required to be followed for the requisite payment in the aftermath of withdrawal of the chamber appeal being O.A.



No. 5/2020 (on 16.01.2020). In this regard, it has been averred in the present appeal as under:-

“9. It is further submitted that because of the financial implication involved and being a Government Organization, the payment of cost can be processed only on the receipt of a communication from the Advocate on behalf of NBCC, (Respondent/Appellant herein) and also after receiving the copy of the Order of the Hon'ble Court.

10. It is submitted that in the present case, the Respondent/Appellant (NBCC) got the intimation of the order telephonically on 16<sup>th</sup> January 2020 from the concerned advocate, however the Respondent/Appellant could only start the process of the payment of the cost only on 21<sup>st</sup> January 2020, that is after the Order of 16<sup>th</sup> January 2020 was uploaded on the High court site for which the Respondent/Appellant herein got a notification on the Legal Software- Provakil available with NBCC, a screenshot of which is attached herewith

11. That hence, the Note with regard to the payment of the cost was initiated by the Law Division on 22<sup>nd</sup> January 2020 only after uploading of the Order dated 16<sup>th</sup> January 2020.

12. It is further submitted that the internal approval for filing an Appeal against an Order is with the HOD (Law) as per Clause 5.6 of the Sub Delegation of Powers (SDoF), 2019 which was sought at the time of filing the Appeal against order dated 18<sup>th</sup> November 2019. However, the Approval for payment of cost imposed by the Hon'ble Court, beyond Rs.25000/- is with Directors, which, in this case, could be sought only after the decision of the Appeal, as per Clause 5.2 of the SDoP, 2019.

13. It is further submitted that as a general practice, the Note for seeking Approval is moved by the Law Division and forwarded to ED (Engg.) and once the same is signed by ED (Engg.), it is forwarded to the Director (Commercial) to whom the Law Division reports through the ED (Engg).

14. It is further submitted that the Director (Commercial) was on tour from 19<sup>th</sup> January 2020 to 24<sup>th</sup> January 2020.

15. That it is further submitted that the Director (Commercial) was on leave on 30<sup>th</sup> January and 31<sup>st</sup> January, 2020.



*16. It is further pertinent to add herein that approval from the Director is necessary for the concerned Finance Division to process the payment in order to avoid any subsequent audit observations etc.*

*17. That hence the approval for payment of cost could be processed further only on the Director (Commercial) joining office.*

*18. That it is further submitted that subsequent to the Approval-from the Director (Commercial), the Approval was forwarded to the concerned Zone handling the said Project, which in this case is the Noida Office wherein the respective Finance Incharge was given the necessary instructions to process the payment based on the Approval.*

*19. That subsequently a Cheque numbered 000281 dated 03.02.2020 was issued in the name of the Petitioner herein.”*

4. In the above background, it is contended that the learned Joint Registrar failed to appreciate that the delay in payment of costs was not intentional or deliberate. It is contended that the defendant/appellant had every intention to comply with the directions regarding payment of costs in the aftermath of withdrawal of the chamber appeal on 16.01.2020 and to this end, a cheque bearing No.000281 dated 03.02.2020 had also been prepared in the name of the plaintiff. However, the impugned order dated 30.01.2020 directed that the written statement of the defendant be taken off the record since the costs had remained unpaid till the said date. It is further submitted that when the present chamber appeal came up for consideration on 28.02.2020, the aforesaid cheque for Rs.1 lakh was kept ready for being handed over to the plaintiff. This fact has been specifically referred to in para 19 of the present chamber appeal. Vide order dated 10.05.2022, it was directed by this court as under:-

*“O.A. 33/2020*



*A request is made on behalf of Mr. Karunesh Tandon, learned counsel for the plaintiff by Ms. Simran Mulchandani, who submits that the counsel leading her in the matter, is presently in self-isolation.*

*2. Mr. Jay Savla, learned senior counsel appearing for the defendant submits that OA No. 33/2020 is long-pending, which impugns order dated 30.01.2020 whereby the learned Joint Registrar has taken the written statement off the record for non-payment of costs within time.*

*3. Senior counsel submits that a cheque for payment of costs is ready and available with him.*

*4. In view of the above circumstances, without prejudice to the rights and contentions of the plaintiff in relation to O.A. No.33/2020 and without passing any final order as regards the written statement filed by the defendant, let the costs of Rs. 1,00,000/- imposed by the learned Joint Registrar be deposited in the name of the 'Registrar General, Delhi High Court' within 03 weeks from today; with a direction to the Registrar General to retain the said sum in a Fixed Deposit Receipt in a nationalised bank initially for a period of 06 months, to be renewed for the like period from time-to-time, without awaiting any further directions in that behalf, until otherwise directed by the court.*

*5. Re-notify on 19<sup>th</sup> September 2022.”*

5. Accordingly, the costs of Rs. 1 lakh are stated to have been deposited by the defendant in terms of the aforesaid directions with the Registrar General of this court. In the above backdrop, it is contended that the costs imposed vide order dated 18.11.2019 be released to the plaintiff and the impugned order dated 30.01.2020 whereby the written statement of the defendant has been ordered to be taken off the record for non-payment of the said costs, be set aside.

6. The present appeal has been opposed by the learned counsel for the plaintiff. Learned counsel for the plaintiff has questioned the maintainability of the appeal. Further it has been contended that the impugned order was perfectly justified in view of non-payment of costs by the defendant within



the prescribed time period, especially in the backdrop of the conduct on behalf of the defendant in filing its written statement with inordinate delay as noticed in the order dated 30.01.2020.

7. Having given my anxious consideration to the matter, I am of the view that the present appeal deserves to be allowed. The reasons are enumerated hereunder:-

**Maintainability of the present O.A.**

8. The present OA is a creature of Rule 5 of Chapter II of the Delhi High Court (Original Sides) Rules, 2018, which provided as under:-

*“5. Appeal against the Registrar’s orders.-Any person aggrieved by any order made by the Registrar, under Rule 3 of this Chapter, may, within fifteen days of such order, appeal against the same to the Judge in Chambers. The appeal shall be in the form of a petition bearing court fees of Rs.2.65.”*

9. The aforesaid rule is *pari materia* with Rule 4 of Chapter II the Delhi High Court (Original Side) Rules, 1967 which provided as under:-

*“4. Appeal against the Registrar's orders.-Any person aggrieved by any order made by the Registrar under Rule 3 may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers. The appeal shall be in the form of a petition bearing court fees stamp of the value Rs.2.65 P”*

10. In the context of the aforesaid Rule 4, it has been held by Division Bench of this court in *Akash Gupta vs. Frankfinn Institute of AIR Hostess Training*<sup>2</sup>; as under:-

*“11. Rule 3 as quoted above gives certain powers to a Registrar to pass orders on specified applications/questions. A Registrar is competent to pass orders in respect of the matters specified in Rule 3 and not others. Rule 4 provides for appeal by a person aggrieved by*

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<sup>2</sup> 2006 (88) DRJ 31 (DB)



*the order made by the Registrar under Rule 3. If both the Rules are read harmoniously it will be incorrect to state that Rule 4 merely provides for a forum of appeal and does not provide for a right to appeal. Right to appeal is also specifically provided for and mentioned in Rule 4. All orders made under Rule 3 by a Registrar can be made subject matter of appeal under Rule 4. We, therefore, need not refer to Order XLIII Rule 1 of the Code for deciding whether an appeal is maintainable under Rule 4 of the Rules. It may also be stated here that the Registrar is not competent to decide any dispute or applications that have been specified in Order XLIII Rule 1 of the Code, under Rule 3 of the Rules.*

**12.** *Section 10 of the Act provides for an appeal against a “judgment” to a Division Bench but this in no manner curtails or prevents the High Court to frame Rules under Section 7 in respect of matters pertaining to all proceedings of original side and also provide for an appeal against an order passed by a Registrar of this Court to a Judge in Chamber. It cannot be held that Rules 3 and 4 framed under Section 7 of the Act are in any manner contrary to the appellate jurisdiction as provided in Section 10 of the Act. Sections 7 and 10 of the Act have to be read harmoniously. Statute has to be read as a whole and every provision of the statute must be construed to make a consistent enactment. No provision should be left meaningless or otiose. Section 10 only deals with appeals against orders of a single Judge to a Division Bench in the High Court. It does not deal with or states that no appeal will lie against an order passed by a Registrar before a Judge in Chamber. Rule 4 of the Rules is not contrary to or inconsistent with Section 10 of the Act.*

**13.** *Section 7 empowers Delhi High Court to make rules in respect of practice and procedure before it for the exercise of its ordinary original civil jurisdiction. The words “practice and procedure” are very wide and will include the power to regulate and specify the method by which the Court will conduct its proceedings, while dealing with and disposing of various applications. “Practice and procedure” will also include providing for an appeal against an order passed by a Registrar under Rule 3 as provided in Rule 4. In any case, vires of Rule 4 has not been questioned and challenged.*

**14.** *It may also be mentioned here that in case it is held that an order passed by the Registrar under Rule 3 is not appealable under Rule 4 to a Judge in Chamber, an aggrieved person may be required to file a Special Leave Petition, if it is not a “judgment”. Such interpretation in our opinion should be avoided.”*





11. As such, the dispensation/right created under Rule 4, being a creature of the rules framed under Section 7 of the Delhi High Court Act, 1996 was upheld. It was held that an appeal would lie against an order made by the Registrar, even though no appeal was provided under the Code of Civil Procedure, Delhi High Court Act, 1996 or the Letters Patent.

12. In *Sreyas Sripal v. Upasana Finance Ltd*<sup>3</sup>, a judgment rendered by a Division Bench of Madras High Court, it was held that the learned Registrar (the Master in the Madras High Court) while dealing with matters in exercise of powers delegated to him under the Original Side Rules was acting as a delegate of the court itself and that the relevant provision in the Original Side Rules which provides appeal therefrom was really in the nature of a Revision/Review. The said conclusion was arrived at in the context of examining the issue as to whether a second appeal before the Division Bench of the Court would be barred under Section 100-A of the Code of Civil Procedure. The said judgment was relied upon by the Division Bench of this court in the case of *Rahul Gupta vs. Pratap Singh & Ors*<sup>4</sup>, wherein it was held as under:-

*“23. In view of the above, would it be correct to consider an appeal under Rule 4 of the said Rules as an appeal in the true sense? In our view, the answer to the said question would be in the negative. This is so because an authority cannot sit in appeal against an order which has been passed in exercise of its jurisdiction, albeit by its delegate. At best the power exercised by the Single Judge under Rule 4 of the O.S. Rules is a power to review and re-examine orders passed by the Registrar. We accept the contention that the expression appeal in Rule 4 of the O.S. Rules is a misnomer as an appeal under Rule 4 of chapter II of the O.S. Rules, could certainly not be considered as an appeal but a mere re-examination/review of the order passed by the Registrar. We are persuaded by the decision of a Division Bench of*

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<sup>3</sup> (2007) 4 CTC 161

<sup>4</sup> 2013 (139) DRJ 379 [DB]: ILR (2014) 1 Delhi 270



*the Madras High Court in Sreyas Sripal v. Upasana Finance Ltd. (supra), whereby, on the basis of similar reasoning, that Court has also concluded that the court did not exercise powers of appeal, against an order of a Master, under Order XIV Rule 12 of the Madras High Court Original Side Rules. Accordingly, the bar under Section 100A of the Code was not applicable and appeals before a Division Bench, against an orders passed by Single Judges, were maintainable. The relevant extract of the said judgement is quoted below:—*

*“8. Applying the same logic, this Court cannot exercise the power of appeal or revision against the order of the Master, which is passed by him in the capacity as a delegate of the High Court. It is well settled that ordinarily an appeal would lie from a lower Authority to the higher Authority and an order passed by the delegate is in exercise of powers given by the delegator and such an order is not appealable or revisable. Therefore, we are inclined to accept the contention of the learned Senior Counsel Mr. Yashod Vardhan that the word appeal in Order XIV Rule 12 is a misnomer, but it is actually a power of review of this Court. Therefore, such an order passed by the Master is not appealable or revisable by the learned Judge under Rule 12. The power conferred under Rule 12 is really in the nature of power of revision. Consequently, the bar under Section 100A of the Code of Civil Procedure is not attracted and the appeals are perfectly maintainable.”*

*It can be noticed that neither the judgment of the Division Bench of the Madras High Court nor the aforesaid judgment of Division Bench of this court impinged upon the exercise of powers under Rule 4 of Delhi High Court (Original Side) Rules, 1967.”*

13. In **Rahul Gupta (supra)** the Division Bench of this court also considered its prior decision in **Akash Gupta (supra)** and held as under:-

*“25. In the case of Akash Gupta v. Frankfinn Institute of Air Hostess Training, AIR 2006 Delhi 325 (DB), the question that arose for consideration was whether an appeal would lie under Rule 4 of Chapter II of the O.S. Rules against any order made by the Registrar under Rule 3 of Chapter II of the said Rules, even if no appeal was provided under the Code, the Act or the Letters Patent. The Court held that Rule 4 of Chapter II of the O.S. Rules provided not only a forum but also the right of appeal and all orders made under Rule 3 of Chapter II of the O.S. Rules could be made subject matter of an*



*appeal under Rule 4 of Chapter II of the O.S. Rules. Reference to Order 43 Rule 1 of the Code was not required, to examine whether an appeal under Rule 4 of Chapter II of the O.S. Rules was maintainable or not. This decision also does not further the case of the respondent. The controversy in that case related to whether all orders of the Registrar were subject to an appeal under Rule 4 of the O.S. Rules. Indisputably, an order passed in exercise of powers under said Rule 3 by a Registrar of this Court can be made a subject matter of challenge under Rule 4 of Chapter II of the O.S. Rules. The issue whether the powers exercised under said Rule 4 was appellate power or not was not a subject matter of consideration in that case.”*

14. A subsequent judgment of the Division Bench of this court in ***D & H India Ltd. vs. Superon Schweisstechnik India Ltd<sup>5</sup>***, while examining the maintainability of an appeal, filed before a Division Bench, pursuant to an order passed under Rule 5 of Chapter II of the Delhi High Court (Original Side) Rules, 2018, expressed doubt about the correctness of ***Rahul Gupta (supra)*** on the aspect relating to maintainability of an appeal against an order passed by a Single Judge under Rule 5 before a Division Bench of the High Court/ Commercial Appellate Division of the High Court. However, even in ***D & H India Ltd. (supra)*** it was held as under:-

*“ 46. ....We, therefore, are clearly of the opinion that the jurisdiction, exercised by the learned Single Judge, under Rule 5 in Chapter II of the 2018 Original Side Rules, was appellate in nature, as is expressly stated in the said Rule, and that the use of the word “appeal” in Rule 5 of Chapter II of the 2018 Original Side Rules cannot be regarded as a misnomer”*

15. In ***Kandla Export Corporation and Anr. vs. OCI Corporation and Anr<sup>6</sup>***, the Supreme Court interpreted Section 13 of the Commercial Courts Act for the purpose of considering the scope of an appeal contemplated

<sup>5</sup> 2020 SCC Online Del 477

<sup>6</sup> 2018 SCC Online Del 4390



before a Commercial Appellate Division against the orders passed by the Commercial Division/Commercial Court. However, there was no occasion in the said judgment to consider the scope, validity and ambit of the relevant provisions under the Delhi High Court (Original Side) Rules, 2018 which provides for an appeal, as contemplated under Rule 5 of Chapter-II of the Delhi High Court (Original Side) Rules, 2018 against an order passed by the Registrar.

16. Subsequently, in *Odeon Builders Pvt. Ltd. vs. NBCC (India) Limited*<sup>7</sup> the Division Bench of this court expressed doubts about the correctness of the judgment of the Division Bench in *D & H India (Supra)* inasmuch as it did not consider the judgment of Supreme Court in *Kandla Export Corporation (supra)*. Again however, the issue as to the ambit and validity of Rule 5 of Chapter-II of Delhi High Court (Original Sides) Rules, 2018 did not arise for consideration at all in that case.

17. As is evident from the aforesaid, none of the aforesaid judgments derogate from the right created under Rule 5 of Chapter-II of the Delhi High Court (Original Sides) Rules, 2018, in terms of which any person aggrieved by an order made by Registrar under Rule 3 of the said Chapter can file an appeal against the same to the “Judge in Chambers”.

18. The position was further explicitly clarified by a judgment of the Coordinate Bench of this court in *Maja Cosmetics vs. Oasis Commercial (P) Ltd*<sup>8</sup>.; wherein it has been held as under:-

“18. Section 13 is as under: -

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<sup>7</sup> 2021 SCC Online Del 4390

<sup>8</sup> 2018 SCC Online Del 6698



*13. Appeals from decrees of Commercial Courts and Commercial Divisions-(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:*

*Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996.*

*(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”  
and needs no elucidation.*

*19. The same nowhere refers to a Chamber Appeal which is a creation of the Delhi High Court (Original Side) Rules, 1967 framed in exercise of powers under Section 7 of the Delhi High Court Act, 1966 and under Sections 122 and 129 of the CPC.*

*20. The High Court, vested with ordinary original civil jurisdiction in suits, value of which exceeds Rupees Two Crores, for the sake of expeditious disposal of such suits, in exercise of powers under Section 7 of the Delhi High Court Act, enabling it to make rules and orders with respect to practise and procedure for the exercise of its ordinary original civil jurisdiction, has devised a practice/procedure of certain powers of the Court to be exercised by Joint Registrars (Judicial) and which post is occupied by the Additional District Judges on deputation and of an Appeal against the orders of the Joint Registrar to the 'Judge in Chambers'. One such power which the Joint Registrar (Judicial) is empowered to exercise, is to decide applications for enlargement of time.*

*21. There is nothing in the Commercial Courts Act, to make the said practise/procedure inapplicable to disposal of commercial suits and there is no bar to such a Chamber Appeal. Section 13(2) of the Commercial Courts Act supra, commencing with a non obstante clause only bars appeals, otherwise than as provided therein, against the order or decree of Commercial*



*Court/Commercial Division and not the Chamber Appeal under the Delhi High Court Act and the Delhi High Court Rules.*

*22. In the absence of any bar, it cannot be said that the Chamber Appeal does not lie.”*

[emphasis supplied]

19. Reliance being placed by the learned counsel for the plaintiff on the judgment of a Division Bench of this court in ***Odeon Builders Pvt. Ltd. Vs. NBCC (India) Ltd & Ors***<sup>9</sup>, is misplaced inasmuch as in the said case this court was not concerned with a Chamber Appeal against the order passed by the concerned Registrar but was concerned with an intra-court appeal from an order passed by a single judge/Commercial Division to the Commercial Appellate Division of the High Court. As such, the observations in the said judgment are completely inapplicable to the present case. As noticed in ***Maja Cosmetics (supra)***, the present appeal being a creature of Rule 5 of Chapter II of the Delhi High Court Rules read with Section 7 of the Delhi High Court Act does not derogate from, and cannot be construed to be inconsistent with Section 13 of the Commercial Courts Act.

20. Reliance placed by the learned counsel for the plaintiff on the order passed by a coordinate bench of this court in ***Odeon Builders Pvt Ltd vs NBCC (India) Limited***<sup>10</sup>, is equally misconceived. In the said case the Chamber Appeal filed by the defendant against the order of the Joint Registrar (Judicial) was withdrawn by the learned counsel appearing for the defendant conceding that the appeal is not maintainable<sup>11</sup>. Later on, the defendant moved an application seeking recall of said order whereby the Chamber Appeal was withdrawn on the ground, *inter alia*, that the counsel

<sup>9</sup> FAO (OS) (COMM) 23/2023 decided on 10.09.2021

<sup>10</sup> CS (COMM) 13/2021 order dated 24.03.2023

<sup>11</sup> Ibid order dated 31.10.2022



had erroneously withdrawn the said appeal, and the same was done without taking any instructions from the defendant. In the said context the court observed that the Chamber Appeal was not maintainable before this Court and refused to recall the said order. The factual matrix of the present case is completely different from the said case inasmuch as the defendant herein does not concede that the appeal is not maintainable. It also appears that the prior decision of this court in *Maja Cosmetics (supra)*, dealing directly on the issue of maintainability of the Chamber Appeal vis-a-vis Section 13 of the Commercial Courts Act, was not cited before the concerned coordinate bench.

### **On Merits**

21. It has been rightly contended by the learned senior counsel for the defendant that initially, the defendant sought to assail the order dated 18.11.2019 by filing a chamber appeal being OA No. 5/2020. The said OA came to be dismissed as withdrawn only on 16.01.2020. From the factual conspectus as noticed hereinabove, it is clear that expeditious steps were taken thereafter by the defendant for payment of the requisite costs to the plaintiff. The defendant has placed on record, the relevant rules in the defendant organisation with regard to delegation of powers and the leave application of the concerned director to corroborate the averments made in the present appeal. Importantly, the cheque for Rs. 1 lakh in favour of the plaintiff is stated to have been prepared on 03.02.2020 even prior to filing of the present appeal.

22. It is also noticed that vide order dated 18.11.2019, the reason which impelled the concerned Registrar to condone the delay in filing the written statement was that the written statement was required to be taken on record



to meet the ends of justice so as to enable the defendant to contest the suit on merits. In this regard, the Joint Registrar had rightly relied upon the judgment of the Supreme Court in the case of *N. Balakrishnan Vs. M Krishnamurthy*<sup>12</sup>, in which the Supreme Court observed as under:-

*“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would spout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finislitum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

*It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses.”*

23. It is also notable that Rule 4 of Chapter VII of the Delhi High Court Rules also clearly contemplates that it is permissible for this court to condone the delay in filing the written statement as long as the outer

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<sup>12</sup> (1998) 7 SCC 123





timeline contemplated therein is not breached subject to burdening the party in delay with cost as may be deemed appropriate. It is notable that the time period granted to the recalcitrant party under the aforesaid rule for payment of costs is within the discretion of this court. As such, it is within the purview of this court to extend the time for payment of the requisite costs if facts and circumstances so warrant. This position has been affirmed by the Supreme Court in the case of ***Nashik Municipal Corporation vs. R.M. Bhandari and Anr***<sup>13</sup>. In the said case, certain directions had been issued regarding payment of costs as a condition precedent for restoration of an execution petition. The said costs were not paid within the stipulated time. It was held by the Supreme Court that the time granted for payment of costs could be enlarged, if warranted in the facts of the case. While so holding, the Supreme Court relied upon its earlier judgment in the case of ***Chinnamarkathian vs. Ayyavoo***<sup>14</sup>, in which it has been held as under:-

*“15. ... It is a well-accepted principle statutorily recognised in Section 148 of the Code of Civil Procedure that where a period is fixed or granted by the court for doing any act prescribed or allowed by the Code, the court may in its discretion from time to time enlarge such period even though the period originally fixed or granted may expire. If a court in exercise of the jurisdiction can grant time to do a thing, in the absence of a specific provision to the contrary curtailing, denying or withholding such jurisdiction, the jurisdiction to grant time would inhere in its ambit the jurisdiction to extend time initially fixed by it. Passing a composite order would be acting in disregard of the jurisdiction in that while granting time simultaneously the court denies to itself the jurisdiction to extend time. The principle of equity is that when some circumstances are to be taken into account for fixing a length of time within which a certain action is to be taken, the court retains to itself the jurisdiction to re-examine the alteration or modification of circumstances which may necessitate extension of time. If the court by its own act denies itself the jurisdiction to do so, it*

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<sup>13</sup> (2016) 6 SCC 245

<sup>14</sup> (1982) 1 SCC 159



*would be denying to itself the jurisdiction which in the absence of a negative provision, it undoubtedly enjoys.”*

The Supreme Court also referred to the judgment in ***Saleem Advocate Bar Assn. (2) vs. Union of India***<sup>15</sup>, in which it has been held as under:-

*“41. The amendment made in Section 148 affects the power of the court to enlarge time that may have been fixed or granted by the court for the doing of any act prescribed or allowed by the Code. The amendment provides that the period shall not exceed 30 days in total. Before amendment, there was no such restriction of time. Whether the court has no inherent power to extend the time beyond 30 days is the question. We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of the court. The rigid operation of the section would lead to absurdity. Section 151 has, therefore, to be allowed to operate fully. Extension beyond maximum of 30 days, thus, can be permitted if the act could not be performed within 30 days for reasons beyond the control of the party. We are not dealing with a case where time for doing an act has been prescribed under the provisions of the Limitation Act which cannot be extended either under Section 148 or Section 151. We are dealing with a case where the time is fixed or granted by the court for performance of an act prescribed or allowed by the court.”*

24. In the present case, the defendant/appellant has shown its readiness and willingness to pay the requisite costs to the plaintiff. As noticed hereinabove, the requisite costs have already been deposited by the defendant/appellant before the Registrar General of this court in terms of the directions contained in the order dated 18.11.2019. In the facts and circumstances, the direction contained in the impugned order dated 30.01.2020 to the effect that the written statement filed on behalf of the defendant/appellant be taken off the record is liable to be set aside. It is ordered accordingly. The costs of Rs. 1 lakh deposited by the

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<sup>15</sup> (2005) 6 SCC 344



defendant/appellant before the Registrar General of this court (included accrued interest thereon) are directed to be released to the plaintiff. Upon release of the said amount, the written statement filed on behalf of the defendant/appellant is directed to be taken on record.

25. The present appeal stands disposed of in terms of the aforesaid directions.

**SACHIN DATTA, J.**

**JULY 03, 2023/rb**

