2026:DHC:8888-DB

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

% ***Reserved on: 03.09.2026***
Date of decision: 08.10.2026

\# **CNR No. DLHC010384862026**

\+ FAO(OS) 93/2026, CM APPL. 55377/2026 & CM APPL. 55376/2026

YOGESH TANEJA (SINCE DECEASED THROUGH LRS)
.....Appellant

Through: Mr. Anshul Sharma with Mr. Vishesh Tomar, Advs. along with Mr. Anuj Taneja, LR of appellant in-person.

versus

VIJAY TANEJA (SINCE DECEASED THROUGH LRS)
.....Respondent

Through: Mr. Ishaan Seth, Adv.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MS. JUSTICE RENU BHATNAGAR

O R D E R

FAO(OS) 93/2026

1. This appeal arises out of suit which was initially filed as a commercial suit, being CS (COMM) No. 236/2024. By order dated 05.05.2025, the learned Single Judge held that the dispute was not a commercial dispute and directed that the suit be proceeded as an ordinary civil suit, thereafter, numbered as CS(OS) No. 367/2025. The written statement was not filed within the prescribed period. On 20.01.2026, the learned Joint Registrar (Judicial) closed the Appellants' right to file the written statement. The Appellants challenged the said order by way of a Chamber Appeal. By order dated 23.07.2026, the learned Single Judge dismissed the Chamber Appeal and upheld the order of the learned Joint Registrar, holding that the written statement had not been filed even within the outer limit of 120 days reckoned

IBC Laws | www.ibclaw.in

from 05.05.2025. The present appeal is preferred by the Appellants against the said order.

2. The question raised in the present appeal before this Court is whether this court, amongst other has the power to extend the time for filing of a written statement under Rule 4 of Chapter VII of the Delhi High Court (Original Side) Rules, 2018 ("DHC Rules"). Learned counsel for the Appellant submits that the said Rule, being a rule of procedure, ought to be interpreted liberally. He further submits that similar provision under Order VIII Rule 1 CPC, being a rule of procedure, is interpreted by the Supreme Court as conferring, in appropriate cases, a power upon the court to extend the time to file a written statement beyond the period prescribed.

3. Opposing the same, learned counsel for the Respondent relies upon Division Bench judgments of this court in ***Ram Sarup Lugani & Anr. v. Nirmal Lugani & Ors.*** 2020 SCC OnLine Del 1353; ***Delhi Gymkhana Club Ltd. v. Col. Ashish Khanna Sm. Retd. & Ors.*** *2024* SCC OnLine Del 7022*;* and ***Manhar Sabharwal v. High Court of Delhi & Ors***. 2024 SCC OnLine Del 5945, wherein the said Rule 4 of DHC Rules is held to be mandatory, and the total period of 120 days prescribed under the said Rule is held as the outer limit for filing the written statement, which cannot be extended.

4. Rule 4 of Chapter VII of the DHC Rules reads:

> *"Extension of time for filing written statement. - <u>If the Court is satisfied</u> 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, <u>but not thereafter</u>. 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)

5. Order VIII Rule 1 CPC, as substituted by the Code of Civil Procedure (Amendment) Act, 2002, reads:

> *"Written statement. - The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*
> *Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."*
>
> *(emphasis supplied)*

6. A comparison of the two provisions shows that both deal with the filing of the written statement in a civil suit, both prescribe an initial period of 30 days, and a further period not exceeding of 90 days extendable at the discretion of the court. Rule 4 uses the words "*further period not exceeding 90 days, but not thereafter*", while Order VIII Rule 1 CPC provides the extendable period for filing the written statement "*shall not be later than 90 days",* both from the date of service of summons.

7. The Supreme Court considered Order VIII Rule 1 CPC and held it directory in nature in following cases: -

I. ***Kailash v. Nanhku & Ors.*** (2005) 4 SCC 480, a three-judge Bench of the Supreme Court held:

> *"27. Three things are clear. Firstly, a careful reading of the language in which Order 8 Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order 8 Rule 1 is*

procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order 8 Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

> *"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive."*

***

38. The learned counsel for the respondent, on the other hand, invited our attention to a three-Judge Bench decision of this Court in J.J. Merchant (Dr.) v. Shrinath Chaturvedi [(2002) 6 SCC 635] wherein we find a reference made to Order 8 Rule 1 CPC vide paras 14 and 15 thereof and the Court having said that the mandate of the law is required to be strictly adhered to. A careful reading of the judgment shows that the provisions of Order 8 Rule 1 CPC did not directly arise for consideration before the Court and to that extent the observations made by the Court

are obiter. Also, the attention of the Court was not invited to the earlier decision of this Court in Topline Shoes Ltd. case [(2002) 6 SCC 33].”

(emphasis supplied)

***

46.(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.”

(emphasis supplied)

II. ***Salem Advocate Bar Association v. Union of India***, (2005) 6 SCC 344, again a three-judge bench of the Supreme Court held:

“14. *Order 8 Rule 1, as amended by Act 46 of 1999 provides that the defendant shall within 30 days from the date of service of summons on him, present a written statement of his defence. The rigour of this provision was reduced by Amendment Act 22 of 2002 which enables the court to extend the time for filing written statement, on recording sufficient reasons therefor, but the extension can be maximum for 90 days.*

15.*The question is whether the court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order 8 Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the court is altogether powerless to extend the time even in an exceptionally hard case.*

16. *It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order 8 Rule 1 shall have to be determined by having regard to the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention*

of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.

17. *In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [(1965) 1 SCR 970 : AIR 1965 SC 895] a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.*

18. *In Sangram Singh v. Election Tribunal, Kotah [(1955) 2 SCR 1 : AIR 1955 SC 425] considering the provisions of the Code dealing with the trial of the suits, it was opined that: (SCR pp. 8-9)*

> *"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.*
>
> *Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."*

19. *In Topline Shoes Ltd. v. Corpn. Bank [(2002) 6 SCC 33] the question for consideration was whether the State Consumer Disputes Redressal Commission could grant time to the respondent to file reply beyond the total period of 45 days in view of Section 13(2) of the Consumer*

Protection Act, 1986. It was held that the intention to provide a time-frame to file reply is really made to expedite the hearing of such matters and avoid unnecessary adjournments. It was noticed that no penal consequences had been prescribed if the reply is not filed in the prescribed time. The provision was held to be directory. It was observed that the provision is more by way of procedure to achieve the object of speedy disposal of the case.

20.*The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."*

21. *In construing this provision, support can also be had from Order 8 Rule 10 which provides that 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, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word "shall", the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit.In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending*

> *time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1. [**Ed.**: See also Short Notes E to J in Kailash v. Nanhku, (2005) 4 SCC 480 wherein this was the only question before the Supreme Court and wherein a three-Judge Bench has come to exactly the same conclusion. See especially Short Notes F and G therein wherein the Court has dealt with the issue of how to deal with defendants bent on abusing the process of court and delaying proceedings.]"*
>
> *(emphasis supplied)*

8. The same principle was reiterated in ***Rani Kusum v. Kanchan Devi & Ors.***, (2005) 6 SCC 705, by a two-judge bench of the Supreme Court which followed both ***Kailash*** (supra) and ***Salem Advocate Bar Association*** (supra). ***Sambhaji v. Gangabai & Ors.***, (2008) 17 SCC 117, ***Desh Raj v. Balkishan,*** (2020) 2 SCC 708 also followed ***Salem Advocate Bar Association*** (supra) in holding Order VIII Rule 1 as directory. The only exception has been (***Dr.) J.J. Merchant & Ors. v. Shrinath Chaturvedi,*** (2002) 6 SCC 635, wherein the Supreme Court held Order VIII Rules 1 CPC to be mandatory. By paragraph 38 (already quoted above) in ***Kailash*** (supra), the ***(Dr.) J.J. Merchant*** (supra) was held to be *obiter.*

9. In the aforesaid judgments, the Supreme Court considering the language of both Order VIII Rule 1 and Rule 10 of CPC held that the mere use of negative language is not by itself conclusive. The language of the provision must be considered along with its object, scheme and the consequences flowing from the same interpretation placed upon it. They hold that despite the word "shall" used; the provision is directory.

10. On the other hand, the following Division Benches held Rule 4 of Chapter VII of DHC Rules to be mandatory in nature, leaving no discretion with the Court to extend the time beyond the prescribed time limit of 120 days.

I. In ***Ram Sarup Lugani*** (supra) 2020 SCC OnLine Del 1353, the court held:

> *"21. 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. 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. Any other meaning sought to be bestowed on the above provision, would make the words "but not thereafter", inconsequential.*
>
> *22. The next contention of Mr Mehta that the words "the Registrar shall forthwith place the matter for appropriate orders before the court" used in Rule 5 of the DHC Rules indicates that the court would still have the power to accept a replication filed beyond a period of 45 days, is also untenable. The Supreme Court has emphasized that the answer to the problem as to whether a statutory provision is mandatory or is Directory in nature, lies in the intention of the law maker, as expressed in the law itself. The words "replication, if any, shall be filed within 30 days of the receipt of the written statement" and further, the words "further period not exceeding 15 days, but not thereafter" used in Rule 5 will lose its entire meaning if we accept the submission made on behalf of the appellants that even if the timeline for filing the replication cannot be extended by the Registrar, there is no such embargo placed on the court.*
>
> ***
>
> *31. 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. 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."

(emphasis supplied)

II. The similar view was taken by another Division Bench of this court in ***Manhar Sabharwal*** (supra). The relevant paragraphs are as follows:

"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.

***

18.1 The reliance by the petitioners on the judgment in the case of Kailash v. 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 nonobstante 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.

***

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."

(emphasis supplied)

III. This court followed the decision of ***Manhar Sabharwal*** (supra) in ***Delhi Gymkhana Club Ltd.*** (supra) and held:

"21. *The purpose of fixing an outer time limit under Rule 4 of Chapter VII of the DHC Original Side Rules for filing the written statement is to ensure that the delay in filing of written statement does not lead to further delay in adjudication of civil suits. The validity of this Rule having been upheld by the Division Bench in Manhar Sabharwal (supra), the said Rule becomes mandatorily applicable to all suits including non-commercial suits before the Delhi High Court (Original Side).Accordingly, the Court can only extend the period of 30 days for filing of written statement by further 90 days, but not beyond the period of 120 days in total in the opinion of this Court. The language of Rule 4, Chapter VII of the Delhi High Court (Original Side) is clear when it uses the term* ***'not thereafter'****, as is seen from the text extracted above."*

(emphasis supplied)

11. A comparison of Order VIII Rule 1 CPC and Rule 4 of DHC Rules shows that the language of the same is parallel to each other. There is however no DHC Rules similar to replacing Order VIII Rule 10 CPC. Once there is no DHC Rules replacing contrary to the procedure prescribed by CPC, the procedure as prescribed by CPC is to apply. Therefore, Rule 4 of DHC is to be

read along with Order VIII Rule 10 of CPC. No doubt, there is minor difference in the language of both i.e. Order VIII Rule 1 CPC and Rule 4 of DHC Rules but it is only cosmetic and the intent and purpose of both is same. It cannot be said that either of them is more or less directory/mandatory in nature. In the given circumstances there is no reason for not applying the principle of interpretation adopted by the Supreme Court for interpreting Order VIII Rule 1 CPC while interpreting Rule 4 of DHC Rules. Thus, applying the same principle, the only possible interpretation is that Rule 4 of DHC Rules is also directory in nature, leaving the same discretion with the High Court, as is available to any other Courts to which Order VIII Rule 1 CPC applies.

12. Now coming to the judgments of the Division Benches of this court, all the three judgments firstly states, that, in view of section 129 of CPC High Court has power to amend its rules applicable to their Original Civil Side procedure, and where such rules provides a different procedure, the provisions of CPC would not apply. There cannot be any dispute that to the extent High Court Rules provides a different procedure, the procedure provided under CPC shall not apply. However, where there is no High Court Rules providing a different procedure, CPC shall prevail. Further, as already found above in the present case, the Rule 4 of DHC Rules provides a rule replacing Order VIII Rule 1 CPC, but, the language of the same is not at variance. High Court Rules also do not provide any replacement to Order VIII Rule 10 CPC, which is also relied by Supreme Court for purposes of interpretation. Once the language of both the provisions is similar, merely because the High Court has power to replace, would not mean that the language of the Rule is also to be interpreted in a different manner. The

principles of interpretation applicable would not change as both the CPC and DHC Rules are for the same purpose, that is, to set procedure for filing written statement in a suit.

13. Secondly, in ***Ram Sarup Lugani*** (supra) the Division Bench relied upon the judgment of Supreme Court in ***Union of India v. Popular Construction Co.,*** (2001) 8 SCC 470, which interpreted Section 34(4) of the Arbitration Act, 1996. In our humble opinion the procedural law applicable to a tribunal is vastly different than procedure provided for a suit. The Arbitration tribunal is in fact set up as an alternate dispute redressal forum to avoid the long procedure provided for deciding a suit. In fact, by Section 19 of the Arbitration Act it is left to the discretion of each arbitrator to decide its procedure, provided the same is fair and not in violation of principles of nature justice. Therefore, in our humble opinion any reliance placed on judgments applied in interpreting the provision of Arbitration Act cannot apply to that of CPC.

14. It is also well settled that words used in a statute must be understood in the context in which they are used. In ***Naresh Kumar Madan v. State of M.P.*** 2007 4 SCC 766, held:

> *"6. Different statutes may use the same term for different purposes. A term or a word may be interpreted in the statute itself for fulfilling the purport and object mentioned therein whereas in another statute it may be defined differently.*
> *7. Interpretation of a term in one statute, however, cannot be done with reference to its definition contained in another. (See Raymond Ltd. v. State of Chhattisgarh [(2007) 3 SCC 79 : (2007) 3 Scale 341].)"*

15. Another reason that we find for differing with the view of the aforesaid earlier benches is, that, the DHC Rules came in the year 2018. Prior to the

same in 2016, the CPC amendment for commercial courts had come in the place, amending Order VIII Rule 1 CPC as follows:

> *"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 and twenty days from the date of service of summons and on expiry of one hundred and 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)*

16. This language on the face of it is mandatory as it provides that in case of failure in filing written statement within the time provided, the right to file the written statement shall stand forfeited and the Court shall not allow the written statement to be taken on record. Both Order VIII Rule 1 CPC and aforesaid judgments of Supreme Court holding the same to be directory and the amended proviso of CPC as applicable to commercial courts making the same mandatory, were before the High Court. High Court while framing DHC Rules did not choose the language provided for commercial courts but choose that for the civil courts. Therefore, while drafting the rules the High Court knowingly and consciously adopted the language which was already interpreted by Supreme Court as directory, and thus, now no different interpretation can be given.

17. Lastly, there still remains the question as to whether the power exercised by the registrar under Rule 4 of Chapter VII DHC is judicial or ministerial. A perusal of the said rule shows that the same is divided in two parts, the first part uses the word "court" and provides that after the initial period of 30 days, the court may extend the time by a further period not

exceeding 90 days, and not thereafter. While the second part provides that in case no written statement is filed within the extended time also, the "registrar" may pass order for closing the right to file written statement. The registrar has power to accept the written statement within the period extended by the court and not thereafter. After the expiry of period provided or extended by the Court, the only job left for the registrar is to close the matter and send the same to the court. The power to extend any time to file written statement only vest with the court and not with the registrar. Therefore, the power exercised by the registrar is only ministerial in nature having no attributes of any judicial power. Therefore, no question of any chamber appeal arises as no judicial power is exercised by the registrar.

18. However, the Division Bench of this court in ***Rahul Gupta v. Pratap Singh & Ors***., 2013 SCC OnLine Del 4760 held that:

> *"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 the Madras High Court in Sreyas Sripal v. M/s. 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 appelable 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."*
>
> *(emphasis supplied)*

19. On the contrary, the Supreme Court in ***State of Orissa and Others v. Commissioner of Land Records and Settlement, Cuttack and Others***, (1998) 7 SCC 162, is relevant to the distinct question of the effect of an order passed by a delegate and the power of the principal to hear a review/revision of such an order. The Court held:

> *"25. We have to note that the Commissioner when he exercises power of the Board delegated to him under Section 33 of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the Constitution Bench of this Court in Roop Chand v. State of Punjab [AIR 1963 SC 1503 : 1963 Supp (1) SCR 539] . In that case, it was held by the majority that where the State Government had, under Section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it under Section 21(4) to an "officer", an order passed by such an officer was an order passed by the State Government itself and "not an order passed by any officer under this Act" within Section 42 and was not revisable by the State Government. <u>It was pointed out that for the purpose of exercise of powers of revision by the State under Section 42 of that Act, the order sought to be revised must be an order passed by an officer in his own right and not as a delegate of the State. The State Government was, therefore, not entitled under Section 42 to call for the records of the case which was disposed of by an officer acting as its delegate."</u>*

***

"Can the Board review an order passed by its delegate, the Commissioner?

28. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to "review" of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available, to his successor.

29. The decision of the Privy Council in Maharajah Moheshur Sing v. Bengal Govt. [(1857-60) 7 MIA 283 : 3 WR 45 (PC)] to which reference was made by learned Senior Counsel, Shri T.L. Vishwanath Iyer, is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council: (p. 47)

> *"It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another Tribunal."*
>
> *Their Lordships added:*
>
> *"We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only ex necessitate. We do say that in all practicable cases the same Judge ought to review; …."*
>
> *It is, therefore, clear that the same Judge who disposes of a matter, if available, must "review" the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi-judicial authorities."*

(emphasis supplied)

20. We humbly find the view taken by the Division Bench is in the teeth of law laid down by the aforesaid judgment of the Supreme Court, as per which holds that neither a revision nor a review would lie before the learned Single

Judge and even a review would lie before the same authority which exercise the delegated power.

21. Since we are humbly unable to agree with the earlier Division Bench judgments of this court, as detailed above, the following questions are being referred to Larger Bench for consideration:

I. Whether the judgments of the Supreme Court on Order VIII Rule 1 CPC in ***Kailash v. Nanhku***, (2005) 4 SCC 480, ***Salem Advocate Bar Association v. Union of India***, (2005) 6 SCC 344 and subsequent decisions declaring the provision as directory, would be applicable while interpreting Rule 4 of DHC Rules and the decision of the Division Benches in ***Ram Sarup Lugani & Anr. v. Nirmal Lugani & Ors***., 2020 SCC OnLine Del 1353; ***Delhi Gymkhana Club Ltd. v. Col. Ashish Khanna*** 2024 SCC OnLine Del 7022; and ***Manhar Sabharwal v. High Court of Delhi*** 2024 SCC OnLine Del 5945**,** taking a contrary view do not lay down correct law?

II. Whether under Rule 4 of Chapter VII of DHC Rules, it is the Court alone which can extend the time for filing the written statement, and the Registrar merely has ministerial power and has no judicial power to receive the written statement within the initially prescribed period of 30 days or within the period extended by the Court, or whether the Registrar has any power to extend the time for accepting the written statement?

III. Whether the law laid down in ***Rahul Gupta v. Pratap Singh & Ors.,*** 2013 SCC OnLine Del 4760, is contrary to the law settled by the Supreme Court in ***State of Orissa and Others v. Commissioner of***

IBC Laws | www.ibclaw.in

Land Records and Settlement, Cuttack and Others, (1998) 7 SCC 162, and is, therefore, liable to be overruled?

22. Let the matter be placed before Hon'ble the Chief Justice for considering constitution of a Larger Bench on the questions posed by us in paragraph 21 hereinabove.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

OCTOBER 08, 2026
/ss

IBC Laws | www.ibclaw.in