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

+ C.O. (COMM.IPD-TM) 244/2021

VINAY KUMAR GB Plaintiff

Through: Mr. Sanjeev Sindhvani, Sr. Adv.
with Ms. Kruttika Vijay and Mr. Sauhard
Alung, Advs.

versus

SUDHIR KUMAR AND ANR Defendants

Through: Mr. Jayant Kumar and Mr. Amit
Mehta, Advs. for R-1

+ C.O. (COMM.IPD-TM) 245/2021

VINAY KUMAR GB Plaintiff

Through: Mr. Sanjeev Sindhvani, Sr. Adv.
with Ms. Kruttika Vijay and Mr. Sauhard
Alung, Advs.

versus

SUDHIR KUMAR AND ANR Defendants

Through: Mr. Jayant Kumar and Mr. Amit
Mehta, Advs. for R-1

+ C.O. (COMM.IPD-TM) 342/2021

VIJAY KUMAR GB Plaintiff

Through: Mr. Sanjeev Sindhvani, Sr. Adv.
with Ms. Kruttika Vijay and Mr. Sauhard
Alung, Advs.

versus

SUDHIR KUMAR AND ANR Defendants

Through: Mr. Jayant Kumar and Mr. Amit
Mehta, Advs. for R-1

+ C.O. (COMM.IPD-TM) 395/2021

VINAY KUMAR GB

..... Plaintiff

Through: Mr. Sanjeev Sindhvani, Sr. Adv.
with Ms. Kruttika Vijay and Mr. Sauhard
Alung, Advs.

versus

SUDHIR KUMAR AND ANR

..... Defendants

Through: Mr. Jayant Kumar and Mr. Amit
Mehta, Advs. for R-1

+ CS(COMM) 779/2022

SHRI SUDHIR KUMAR AT S. BALIYAN, PROPRIETOR OF
INSIGHT IAS ACADEMY

..... Plaintiff

Through: Mr. Jayant Kumar and Mr. Amit
Mehta, Advs.

versus

VINAY KUMAR G B, PROPRIETOR OF INSIGHTS IAS AND
INSIGHTS ACTIVE LEARNING AND ORS.

..... Defendants

Through: Mr. Sanjeev Sindhvani, Sr. Adv.
with Ms. Kruttika Vijay and Mr. Sauhard
Alung, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (ORAL)

16.02.2023

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C.O. (COMM.IPD-TM) 244/2021

C.O. (COMM.IPD-TM) 245/2021

C.O. (COMM.IPD-TM) 342/2021

C.O. (COMM.IPD-TM) 395/2021

CS(COMM) 779/2022

1. These matters were listed today in view of a somewhat intricate
C.O. (COMM.IPD-TM) 244/2021 and other connected matters

objection raised by Mr Jayant Kumar, learned Counsel for the respondents in CO (COMM IPD TM) 244/2021 and CO (COMM IPD-TM) 245/2021, to the taking, on record, of the rejoinders filed by the petitioners.

2. Mr. Jayant Kumar, learned Counsel for the respondent submitted that the rejoinders filed by the petitioner in these petitions had been filed beyond the time stipulated in Rule 7(x)¹ of the Intellectual Appellate

3. Division (IPD) Rules, 2002 as applicable to this Court and that, therefore, they could not be taken on record. According to Mr. Jayant Kumar, the use of the word “shall”, in Rule 7(x) of the IPD Rules *supra* forecloses the right of the petitioner to file a rejoinder once the maximum period envisaged in the said Rule has expired.

4. Rule 7(x) of the IPD Rules which, admittedly, relates to the procedure to be followed in the case of original petitions, and would, therefore, apply to the present case, requires the rejoinder, to the reply filed by the respondent in an original petition, to be filed “within the period prescribed by the Court or within 30 days from the date on which the Court directs the filing of such rejoinder”. Mr. Jayant Kumar points out that, in these cases, the learned Joint Registrar in this Court had directed filing of rejoinder on 12th September 2022 without stipulating any period within which the rejoinder was to be filed. Rule 7(x) would, therefore, in his submission, apply to require the rejoinder to be filed within a maximum period of 30 days from 12th September 2022. The

¹ 7. **Procedure for Original Petitions (Civil Original Petition)**

(x) Rejoinder to the reply, if so directed, shall be filed within the period prescribed by the Court or shall be filed within 60 days from the date on which the Court directs filing of the Reply.

rejoinder having been filed on 13th February 2023, Mr. Jayant Kumar submits that it could not be taken on record. The order dated 12th September 2022 of the learned Joint Registrar (Original) read thus:

“ Reply/counter statement filed by respondent no. 1 along with documents.

Rejoinder to counter statement and affidavit of admission/denial be filed in terms of Delhi High Court Intellectual Property Rights Division Rules 2022.

It is submitted by counsel for petitioner that connected matter i.e. C.O. (COMM.IPD-TM) 737/2021 is listed before the Hon'ble Court for 11.11.2022 and has prayed that this matter may be listed along with the said case.

Accordingly, list the matter for completion of pleadings on 11.11.2022.”

5. Mr. Jayant Kumar has also placed reliance on Rule 5² in Chapter VII of the Delhi High Court (Original Side) Rules, 2018 in conjunction with Rule 7(xiii)³ of the IPD Rules. He submits that, by application of Rule 5 in Chapter 7 of the Original Side Rules, the Court was empowered to grant extension of time for filing rejoinder by a maximum period of 15 days beyond the period of 30 days originally provided, subject to costs. The Rule, he submits, further provides that, if the rejoinder is not filed within the said maximum period, it shall not be taken on record.

² 5. **Replication.** – The replication, if any, shall be filed within 30 days of receipt of the written statement. If the Court is satisfied that the plaintiff was prevented by sufficient cause for exceptional and unavoidable reasons in filing the replication within 30 days, it may extend the time for filing the same by a further period not exceeding 15 days but not thereafter. For such extension, the plaintiff shall be burdened with costs, as deemed appropriate. The replication shall not be taken on record, unless such costs have been paid/deposited. In case no replication is filed within the extended time also, the Registrar shall forthwith place the matter for appropriate orders before the Court. An advance copy of the replication together with legible copies of all documents in possession and power of plaintiff, that it seeks to file along with the replication, shall be served on the defendant and the replication together with the said documents shall not be accepted unless it contains an endorsement of service signed by the defendant/his Advocate.

³ (xiii) Procedures applicable to original petitions: The provisions of the Commercial Courts Act, 2015, Delhi High Court (Original Side) Rules, 2018 and orders as also the practice directions issued from time to time, to the extent there is no inconsistency with these Rules, shall be applicable to original petitions filed in the IPD.

6. The mandate of Rule 5 in Chapter 7 of the Original Side Rules, according to Mr. Jayant Kumar, is clear and, therefore, the rejoinder filed by the petitioner in these petitions cannot be taken on record.

7. Mr. Sanjeev Sindhvani, learned Senior Counsel for the petitioner submits that the contention of Mr. Jayant Kumar is completely misconceived. He places reliance on the judgment of Supreme Court in *SCG Contracts (India) Pvt Ltd v. K.S. Chamankar Infrastructure Pvt Ltd*⁴, specifically on paras 8, 9, 14 and 16 thereof, which reads thus:

“8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

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

Equally, in Order 8 Rule 1, a new proviso was substituted 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

⁴ 2019 12 SCC 210
C.O. (COMM.IPD-TM) 244/2021 and other connected matters

the court shall not allow the written statement to be taken on record.”

This was re-emphasized by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

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

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

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

9. In *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*⁵, a question was raised as to whether Section 34(5) of the Arbitration and Conciliation Act, 1996, inserted by Amending Act 3 of 2016 is mandatory or directory. In para 11 of the said judgment, this Court referred to *Kailash v. Nanhku*⁶, referring to the text of Order 8 Rule 1 as it stood pre the amendment made by the Commercial Courts Act. It also referred (in para 12) to *Salem Advocate Bar Assn. v. Union of India*⁷, which, like the *Kailash v. Nanhku*⁶ judgment, held that the mere expression “shall” in Order 8 Rule 1 would not make the provision mandatory. This Court then went on to discuss in para 17 of *State v. N.S. Ganeswaran*⁸, in which Section 154(2) of the Code of Criminal Procedure was held to be directory inasmuch as no

⁵ (2018) 9 SCC 472

⁶ (2005) 4 SCC 480

⁷ (2005) 6 SCC 344

⁸ (2013) 3 SCC 594

consequence was provided if the section was breached. In para 22 by way of contrast to Section 34, Section 29-A of the Arbitration Act was set out. This Court then noted in para 23 as under: (Bihar Rajya Bhumi Vikas Bank Samiti case⁵, SCC p. 489)

“23. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences.”

14. The learned counsel appearing for the respondents also relied upon *R.K. Roja v. U.S. Rayudu*⁹ for the proposition that the defendant is entitled to file an application for rejection of plaint under Order 7 Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order 7 Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records: (SCC p. 277)

“6. ... However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.”

16. The learned counsel for the respondents then strongly relied upon the inherent powers of the court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the view that this argument has also no legs to stand on, given the judgment of this Court in *Manohar Lal Chopra v. Seth Hiralal*¹⁰. In this judgment, the Court held:

“39. The suit at Indore which had been instituted later, could be stayed in view of Section 10 of the Code. The provisions of that section are clear, definite and mandatory. A court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified

⁹ (2016) 14 SCC 275

¹⁰ 1962 Supp (1) SCR 450

circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under Section 151 is not justified.”

Clearly, the clear, definite and mandatory provisions of Order 5 read with Order 8 Rules 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.”

8. Mr. Sindhvani submits that, applying the principles elucidated in the afore-extracted passages from *SCG Contracts*⁴, no consequence of non-filing or the failure to file the replication within the period of 30 days stipulated in Rule 7(x) having been provided in the IPD Rules, it would be erroneous to hold that the replication, if filed beyond the said period, cannot be taken on record. The failure to provide for any consequence of non-compliance of Rule 7(x), in the submission of Mr. Sindhvani, results in the stipulation of the maximum period of 30 days in the said rule being rendered directory, rather than mandatory.

9. Mr. Jayant Kumar has sought, in rejoinder, to distinguish the decision in *SCG Contracts*⁴ by submitting that the Court was, in that case, essentially concerned with Order VIII Rule 1 and 10 of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act and not with the provisions such as Rule 7(x) of the IPD Rules. Besides, he submits, in view of the provisions contained in Rule 5 of Chapter VII of the Original Side Rules, the petitioner could not seek to place reliance on *SCG Contracts*⁴. Mr. Jayant Kumar has also relied on Rule 39¹¹ of the IPD Rules and submits that the restricted power to condone delay is restricted to the said Rule, which refers in turn, to Section 5 of the

¹¹ **39. Condonation of delay** - In case of delay in filing of petitions, appeals or any other proceeding beyond the relevant limitation period, if any, the Court shall have the power to condone delay on principles akin to Section 5 of the Limitation Act, 1963 provided that an application demonstrating sufficient cause to explain such delay is filed.

Limitation Act.

10. Having heard learned Counsel and examined the legal position, I am inclined to agree with Mr. Sindhwani.

11. The attempt of Mr. Jayant Kumar to distinguish *SCG Contracts*⁴ is, on a holistic reading of the decision, misconceived. Para 8 of the report in *SCG Contracts*⁴, no doubt, dealt with the proviso to Order VIII Rule 1 and the proviso to Order VIII Rule 10 of the CPC as amended by the Commercial Courts Act. The Supreme Court observed, in the said case that while the provisos to Order VIII Rule 1 and Order VIII Rule 10 of the CPC required the written statement to be filed within 30 days of summons being served in the suit and granted a grace period of 90 days provided sufficient cause for failure to file the written statement within 30 days was shown, *the said Rules also provided for the consequence of failure to file the written statement within the maximum period of 120 days*. This fact has been underscored by the Supreme Court, in para 8 of the report in *SCG Contracts*⁴ as “of great importance”. The Supreme Court holds that it is of great importance that the provisos to Order VIII Rule 1 and Rule 10 expressly envisaged forfeiture, by the defendant, of the right to file written statement, on the expiry of 120 days from the date of service of summons. In view of the said dispensation, contained in the provisos to Order VIII Rule 1 and Order VIII Rule 10 of the CPC, of the said consequence visiting a defendant who failed to file the written statement beyond 120 days of service of summons, the Supreme Court held that the period of 120 days had to be treated as mandatory.

12. Para 9 of the report contradistinguishes such a case with a situation

in which the applicable provision does not provide for the consequence of failure to comply with the statutory requirement within the maximum period envisaged in the provision. It refers to the judgement of the earlier decision of the Supreme Court in *State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti*⁵, which dealt with Section 34(5)¹² of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”, hereinafter), which, in turn, reads thus:

“9. There is no doubt that the object of Sections 34(5) and (6) is, as has been stated by the Law Commission, the requirement that an application under Section 34 be disposed of expeditiously within a period of one year from the date of service of notice. We have to examine as to whether this, by itself, is sufficient to construe Section 34(5) as mandatory, keeping in view the fact that if the time-limit of one year is not adhered to under Section 34(6), no consequence thereof is provided.”

13. The question which arose before the Supreme Court in the said case was whether Section 34(5) of the 1996 Act was mandatory or directory. In addressing the said issue, the Supreme Court referred to its earlier decisions in *Kailash v. Nanhku*⁶ and *Salem Advocate Bar Association v. U.O.I.*⁷, which dealt with Order VIII Rule 1 of the CPC. It was held, in the said decisions, that the mere fact that Order VIII Rule 1 of the CPC used the word “shall” did not, *ipso facto*, render the provision mandatory. Thereafter, the Supreme Court in *Bihar Rajya Bhumi Vikas Bank Samiti*⁵ went on to distinguish Section 34(5) with Section 29A¹³ of

¹² 34. Application for setting aside arbitral award. –

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

¹³ 29-A. Time limit for arbitral award. –

(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.]

the 1996 Act. Unlike Section 29A of the 1996 Act which provided [in sub-section (4)] that, if an award was made beyond the stipulated or extended period contained in that provision, the mandate of the arbitrator would terminate, it was observed that Sections 34(5) and (6) of the 1996 Act did not provide for any consequence of the time provided in Section 34 lapsing. Thus, the Supreme Court, in *Bihar Rajya Bhumi Vikas Bank Samiti*⁵ distinguishes between provisions in which though the word “shall” may have been employed, the consequence of failure to comply with the provision was, and was not, provided.

14. *Bihar Rajya Bhumi Vikas Bank Samiti*⁵ also invokes the principle, by now trite in law, that procedural provisions are ordinarily engrafted *ex debito justitiae* and have, therefore, to be regarded as directory, unless there is strong reason to hold otherwise. that, procedural provisions are ordinary to be regarded as directory rather than mandatory. Additionally, and at the cost of repetition, where the provisions do not provide for any consequence of failure to act within the maximum period envisaged thereby, the stipulation of maximum period is required to be treated as directory.

15. Unlike the situation which obtains in the provisos to Order VIII

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

Rule 1 and Rule 10 of the CPC as amended by the Commercial Courts Act, Rule 7 of the IPD Rules do not provide for any consequence of failure to file rejoinder within the time envisaged by Sub-Rule (x) thereof. Resultantly, it cannot be said that, if the rejoinder is not filed within the period of 30 days envisaged in the said Rule, the rejoinder would liable to be struck off the record, where the Court is satisfied that the rejoinder was not filed within the said period for valid reasons.

16. The reliance, by Mr. Jayant Kumar, on Rule 5 in Chapter VII of the Original Side Rules is, in my considered opinion, misplaced. Rule 7(xiii) of the IPD Rules makes Rule 5 of Chapter VII of the Original Sides Rules applicable to original IPD petitions. The applicability is not, however, absolute. Rule 7(xiii) specifically states that the Original Side Rules, orders and practice directions issued from time to time in that regard would apply *to the extent there is no inconsistency with the Rules*.

17. Rule 5 in Chapter VII of the Original Side Rules provides for filing of replications in original suits instituted before this Court. It does not, on its face, apply to original IPD petitions instituted, for example, under Section 57(1) and (2)¹⁴ of the Trade Marks Act, as in the present case.

18. Rule 7(xiii) of the IPD Rules, no doubt, makes the provisions of the Original Side Rules applicable to original IPD petitions, but *only to*

¹⁴ 57. **Power to cancel or vary registration and to rectify the register. –**

(1) On application made in the prescribed manner to the High Court or to the Registrar by any person aggrieved, the Registrar or the High Court, as the case may be, may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, may apply in the prescribed manner to the High Court or to the Registrar, and the Registrar or the High Court, as the case may be, may make such order for making, expunging or varying the entry as it may think fit.

the extent the Original Side Rules are not inconsistent with the IPD Rules. Inconsistency may be of two types. There may be situations where the IPD Rules provide one way, and the Original Side Rules another. That would be a case of clear and stark inconsistency. Inconsistency would, however, also exist, as in the present case, where the IPD Rules do not envisage any consequence of failure to comply with a provision, whereas the Original Side Rules, dealing with a similar provision in relation to suits, does so. The statutory intent in the two provisions would, then, be different. The provisions would, therefore, not be consistent in that respect. Importing, into the IPD Rules, the consequence which is envisaged in relation to suits by the Original Side Rules would be impermissible, as it would amount to reading, into the IPD Rules, a consequence which the Original Side Rules envisages only in relation to original suits, and which the IPD Rules does not envisage in relation to original IPD petitions.

19. Viewed thus, it becomes impossible to apply Rule 5 of Chapter 7 of the Original Side Rules to a situation which is covered by Rule 7(x) of the IPD Rules. Rule 7(x) is self contained in respect of the requirement of filing of rejoinders in original IPD petitions. While stipulating a maximum period of 120 days for doing so, it does not envisage any consequence of default. No such consequence is envisaged elsewhere in the IPD Rules either. Where the IPD Rules does not envisage any such consequence of default, one cannot tinker with the legislative intent by importing, into the IPD Rules, the consequence of default in failing to file replications in original suits within the time stipulated, as envisaged by Rule 5 of Chapter VII of the Original Side Rules, by invoking, for the purpose, Rule 7(xiii) of the IPD Rules.

20. Even otherwise, there is a clear distinction between Rule 7(x) of the IPD Rules and Rule 5 in Chapter VII of the Original Side Rules, as regards the time for filing rejoinder (in the former case) and replication (in the latter). Rule 7(x) grants time to file rejoinder either as prescribed by the Court or within 30 days from the date on which the Court directs filing of the rejoinder. This provision is, therefore, a self contained provision relating to filing of a rejoinder in original IPD petitions. As against this, Rule 5 in Chapter VII of the Original Side Rules requires the replication to be filed within 30 days of receipt of the written statement and *empowers the Court to extend the time for filing replication, if not filed within 30 days, by a further period of 15 days, but not thereafter. It further requires the plaintiff, if such extension of 15 days is granted, to be burdened with costs. Failure to pay the costs so imposed would result in the replication not being taken on record. No such provisions are to be found in Rule 7(x) of the IPD Rules, which does not provide either for any extension in time to file rejoinder beyond the period of 30 days envisaged therein, or for imposition of costs for doing so. The words “but not thereafter”, to be found in Rule 5 of Chapter VII of the Original Side Rules are also conspicuously absent in Rule 7(x) of the IPD Rules. The Court cannot, by judicial fiat, read, into Rule 7(x) of the IPD Rules, the words “but not thereafter” which, though consciously employed in Rule 5 of Chapter VII of the Original Side Rules, do not find place in Rule 7(x) of the IPD Rules. Further, the consequence of non payment of costs imposed in terms of Rule 5 of Chapter VII of the Original Side Rules, cannot be made, by extrapolation, to apply to non filing of a rejoinder within the time stipulated in Rule 7(x) of the IPD Rules.*

21. Even for this reason, it is not possible for the Court to, by relying

on Rule 5 of Chapter VII of the Original Side Rules, hold that the rejoinder, filed beyond the period of 30 days envisaged by Rule 7(x) of the IPD Rules, cannot be taken on record.

22. For these reasons, the objection of Mr. Jayant Kumar, to the effect that as the rejoinder in CO (COMM IPD TM) 244/2021 and CO (COMM IPD-TM) 245/2021 were filed beyond 30 days from the date of filing of written statement, they cannot be taken on record, fails.

23. No other objection, to the taking on record of the said rejoinders, was raised by Mr Jayant Kumar.

24. As such the rejoinders filed in CO (COMM IPD TM) 244/2021 and CO (COMM IPD-TM) 245/2021 are taken on record.

25. Both sides submit that if this dispute is referred to Mediation, there may be a possibility of an amicable resolution. As such, these cases are referred to mediation by the Delhi High Court Mediation and Conciliation Centre.

26. Learned Counsel may contact the concerned officer in the Delhi High Court Mediation and Conciliation Centre on 20th February 2023 at 2 pm to fix a schedule for Mediation.

27. Accordingly, re-notify on 13th April 2023 to ascertain the outcome of Mediation.

C.HARI SHANKAR, J

FEBRUARY 16, 2023

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