



2. First the facts in which the said question arises.
3. The plaintiff has instituted this suit for permanent injunction restraining infringement of Patent No.193247 and for ancillary reliefs. No interim relief was granted to the plaintiff. The validity of the patent has lapsed since the institution of the suit. Thus, the relief claimed in this suit, insofar as of permanent injunction, does not survive and the suit is being pursued only for the relief of damages.
4. The defendant contested the suit. Vide order dated 29<sup>th</sup> January, 2018, after hearing the counsels liberty was granted to the defendant to if so desires, file a Counter Claim for revocation of the subject patent, after withdrawing the proceedings under Section 64 of the Patents Act, 1970 pending before the Intellectual Property Appellate Board (IPAB) and it was further ordered that if no Counter Claim was made within 30 days, liberty shall cease and the time for filing Counter Claim shall not be extended. Vide the same order, it was also provided that if Counter Claim was so filed by the defendant, written statement thereto by the plaintiff be filed within further 30 days thereafter and replication thereto if any be filed within yet further 30 days thereof and the proceedings posted on 2<sup>nd</sup> August, 2018 for framing of issues and for consideration of other pending applications.
5. The defendant, after serving an advance copy of the Counter Claim to the counsel for the plaintiff on 23<sup>rd</sup> February, 2018 filed the Counter Claim in this Court on 23<sup>rd</sup> February, 2018 and re-filed the same on 30<sup>th</sup> July, 2018.

6. The plaintiff though is found to have filed the written statement to the Counter Claim in this Court on 19<sup>th</sup> April, 2018 but the acknowledgment of the counsel for the defendant / Counter Claimant of receipt of the copy of the said written statement is of 2<sup>nd</sup> May, 2018. The written statement to the Counter Claim is found to have been re-filed after 19<sup>th</sup> April, 2018 on 2<sup>nd</sup> May, 2018 and thereafter on 10<sup>th</sup> October, 2018.

7. The defendant / Counter Claimant filed replication to the written statement of the plaintiff to the Counter Claim with advance copy to the counsel for the plaintiff on 31<sup>st</sup> May, 2018 and re-filed on 2<sup>nd</sup> June, 2018.

8. The suit, in accordance with the order dated 29<sup>th</sup> January, 2018 aforesaid was listed on 2<sup>nd</sup> August, 2018 when IA No.10200/2018 of the defendant / Counter Claimant under Chapter VIII Rules 3,4&10(c) of the Delhi High Court (Original Sides) Rules, 2018 read with Order VIII Rule 10 of the CPC as amended by the Commercial Courts Act, 2015, for (i) taking off the record the written statement filed by the plaintiff to the Counter Claim; (ii) deeming all documents filed by the defendant / Counter Claimant along with the Counter Claim as admitted by the plaintiff; and, (iii) allowing the Counter Claim forthwith, was also listed and notice thereof was ordered to be issued and accepted by the counsel for the plaintiff and the proceedings adjourned to 10<sup>th</sup> October, 2018.

9. On 10<sup>th</sup> October, 2018, the suit was simply adjourned to 11<sup>th</sup> October, 2018 and on 11<sup>th</sup> October, 2018, the counsel for the plaintiff

was not available resulting in the proceedings being adjourned to 10<sup>th</sup> January, 2019.

10. The plaintiff, on 7<sup>th</sup> December, 2018 filed IA No.16868/2018 under Section 151 of the CPC seeking early listing of the suit for framing of issues and for consideration of all pending applications. The said application came up before this Court on 10<sup>th</sup> December, 2018 when upon this Court observing that early hearing was not possible, it was withdrawn (though still shown in the cause list as pending). IA No.16868/2018 be removed from cause list.

11. On 10<sup>th</sup> January, 2019, i) it was observed / recorded that there was no application of the plaintiff for condonation of delay in filing the written statement to the Counter Claim and / or for taking the written statement to the Counter Claim on record; ii) it was the contention of the senior counsel for the defendant / Counter Claimant that in terms of Rule 3 of Chapter VII of the Rules supra, the written statement to the Counter Claim being not accompanied with an affidavit of admission / denial of documents, could not be taken on record; iii) per contra, the counsel for the plaintiff drew attention to Rule 14 of Chapter I of the said Rules empowering the Court to, for sufficient cause, excuse the parties from compliance with any requirement of the Rules and it was contended that since Rule 3 of Chapter VII of the Rules was notified only on 1<sup>st</sup> March, 2018, the delay on the part of the plaintiff in complying therewith ought to be exempted; iv) it was *prima facie* felt that since Rule 3 of Chapter VII uses the word 'shall' and considering the objective of the Commercial

Courts Act, reading 'shall' as 'may' would negate the legislative intent and there would not be any difference left between commercial and ordinary suits and referring in this regard to *Xerox Corporation Vs. P.K. Khansaheb* 2018 SCC OnLine Del 12863, it was observed that the Rules having expressly provided for filing of affidavit of admission / denial along with written statement and having further provided that the written statement shall not be taken on record unless accompanied by the said affidavit, it appeared that admission / denial of documents even if contained in the pleadings would not amount to compliance with the said Rule, the hearing was adjourned to today.

12. The plaintiff has since filed IA No.5229/2019 under Section 148 read with Section 151 CPC for (i) condoning the delay of 131 days in filing the affidavit of admission / denial of defendant / Counter Claimant's documents; ii) dismissal of IA No.10200/2018 of the defendant; and, iii) taking the written statement to the Counter Claim on record. The plaintiff has also filed IA No.5230/2019 under Section 151 CPC seeking acceptance of the affidavit of the authorized representative of the plaintiff which has been executed using the electronic apostilling process in support of IA No.5229/2019. The said two applications have come up first before this Court today.

13. It is deemed appropriate to set out herein below the Rules referred to hereinabove and also referred to in the hearing today. Rules 3,14 to 16 of **Chapter I titled 'General'** of the Rules are as under:

**“3. Application.** —All proceedings on the original side of the Court, instituted or transferred pursuant to provisions of the Delhi High Court Act of 1966, or any other law shall, unless otherwise ordered by the Court, be governed by these Rules.

**14. Court’s power to dispense with compliance with the Rules.**—The Court may, for sufficient cause shown, excuse parties from compliance with any requirement of these Rules, and may give such directions in matters of practice and procedure, as it may consider just and expedient.

[Provided where the Court / Judge is of the opinion that Practice Directions are required to be issued, he may make a suitable reference to the Hon’ble Chief Justice.]

**15. Application for the above purpose.**—An application seeking exemption from compliance with requirements of any of the Rules shall, in the first instance, be placed before the Registrar, who may, without interfering or dispensing with any mandatory requirements of the Rules, make appropriate order(s) thereon, or, if in his opinion, it is desirable that the application be dealt with by the Court, direct that the same be listed before the Court forthwith.

**16. Inherent power of the Court not affected.** — Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court.”

14. Rules 3 and 4 of **Chapter VII titled ‘Appearance by Defendant, Written Statement, Set Off, Counter Claim & Replication’** of the Rules are as under:

**“3. Affidavit of admission/denial of documents alongwith written statement.**—Alongwith the written statement, defendant shall also file an affidavit of

*admission/denial of documents filed by the plaintiff, without which the written statement shall not be taken on record. Alongwith the written statement, the defendant shall be entitled to file applications for interrogatories for examination of the plaintiff together with proposed interrogatories; application for discovery; and application for inspection of such documents.*

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

**4. Extension of time for filing written statement.**—*If the Court is satisfied that the defendant was prevented by sufficient cause for exceptional and unavoidable reasons in filing the written statement within 30 days, it may extend the time for filing the same by a further period not exceeding 90 days, but not thereafter. For such extension of time, the party in delay shall be burdened with costs as deemed appropriate. The written statement shall not be taken on record unless such costs have been paid/deposited. In case the defendant fails to file the affidavit of admission/denial of documents filed by the plaintiff, the documents filed by the plaintiff shall be deemed to be admitted. In case, no written statement is filed within the extended time also, the Registrar may pass orders for closing the right to file the written statement.”*

15. The Rules though were notified on 5<sup>th</sup> January, 2018 came into force with effect from 1<sup>st</sup> March, 2018 and Rules 3 and 14 to 16 of Chapter I, save for a modification in Rule 14, not relevant for the present purpose and Rules 3 and 4 of Chapter VII are in force from the said date but the second limb of Rule 3, in square brackets above, prescribing the form of affidavit of admission / denial of documents

was introduced into the Rules vide notification dated 16<sup>th</sup> October, 2018 with effect from 1<sup>st</sup> November, 2018 only.

16. The senior counsel for the plaintiff has argued, that i) though vide order dated 29<sup>th</sup> January, 2018 time of 30 days from the date of filing of the Counter Claim was granted for filing written statement to Counter Claim but vide subsequent order dated 22<sup>nd</sup> March, 2018, the time for filing written statement by the plaintiff to the Counter Claim of the defendant was extended till 21<sup>st</sup> April, 2018; ii) the plaintiff filed the written statement to the Counter Claim on 19<sup>th</sup> April, 2018 but the same remained under objection; iii) the plaintiff removed the objections and re-filed the written statement on 2<sup>nd</sup> May, 2018; iv) the Registry of this Court, on 3<sup>rd</sup> May, 2018 raised another objection to taking the written statement to the Counter Claim on record i.e. of the written statement being not accompanied with the affidavit of admission / denial of documents filed by the defendant along with his Counter Claim; v) the said objection dated 3<sup>rd</sup> May, 2018 was not notified to the plaintiff and the plaintiff remained under the belief that the written statement had been taken on record, specially since the defendant / Counter Claimant on 31<sup>st</sup> May, 2018 filed a replication to the written statement to the Counter Claim; vi) it was only on receipt of IA No.10200/2018 of the defendant / Counter Claimant on 2<sup>nd</sup> August, 2018 before this Court that the counsel for the plaintiff for the first time realized that the written statement to the Counter Claim had not been taken on record owing to being not accompanied with the affidavit of admission / denial of documents; vii) the plaintiff filed the said affidavit on 12<sup>th</sup> September, 2018 but the same remained under

objection which were removed on 10<sup>th</sup> October, 2018 and the written statement was re-filed along with the affidavit of admission and denial on that date; viii) Rule 3 of Chapter VII, requiring affidavit of admission / denial of documents to be filed along with the written statement was introduced for the first time on 1<sup>st</sup> March, 2018; ix) a conjoint reading of Rules 3 and 4 of Chapter VII of the Rules shows that though affidavit of admission / denial is mandatorily required to be filed along with written statement but the only consequence of non-filing thereof is of the documents filed by the Counter Claimant being deemed to be admitted by the plaintiff; else, there is no objection to the written statement filed without such affidavit being taken on record; and, x) since Rule 3 has been introduced recently, a case for granting exemption from application thereof under Chapter I Rule 14 of the Rules is made out.

17. Per contra, the senior counsel for the defendant has contended that i) written statement is to be filed within 30 days; admittedly the written statement was not filed within 30 days; ii) the question of condoning the delay in filing the written statement does not arise since no application therefor has been filed; iii) without any application for condonation of delay and / or for extension of time being filed setting out reasons therefor, the written statement to the Counter Claim cannot be taken on record; iv) attention is also drawn to recent dicta in ***SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd.*** MANU/SC/0227/2019; v) the power under Rule 14 of Chapter I cannot be exercised qua a mandatory provision of the Rules; vi) the Rule providing for time for filing written statement and time

for filing affidavit of admission / denial of documents is a mandatory provision and no exemption therefrom can be granted, and, vii) the plaintiff's interpretation of Rules 3 and 4 of Chapter VII of the Rules cannot be accepted because the written statement cannot be taken on record without being accompanied with an affidavit of admission / denial of documents.

18. The senior counsel for the plaintiff, in rejoinder has contended that the defendant / Counterclaimant, by filing a replication to the written statement to the Counter Claim has implicitly condoned the delay in filing of the written statement.

19. I will first take up the matter of interpretation of Rules 3 and 4 of Chapter VII of the Rules de hors the facts inasmuch as interpretation thereof is of general application, likely to arise in several cases.

20. For this purpose, it is deemed appropriate to also set out herein below the Rules 1,2,7,7A,10 and 11 also of Chapter VII of the Rules and the same are as under:

***“1. In default of appearance by defendant suit to be posted for hearing.—If on the day fixed for his appearance in the writ of summons, the defendant does not appear, and it is proved that summons was duly served, the suit shall proceed for hearing.***

***2. Procedure when defendant appears.—If the defendant appears personally or through an Advocate before or on the day fixed for his appearance in the writ of summons:—***

***(i) where the summons is for appearance and for filing written statement, the written statement shall not be taken on record, unless filed within 30 days of the date of such service or within the time provided by***

*these Rules, the Code or the Commercial Courts Act, as applicable. An advance copy of the written statement, together with legible copies of all documents in possession and power of defendant, shall be served on plaintiff, and the written statement together with said documents shall not be accepted by the Registry, unless it contains an endorsement of service signed by such party or his Advocate.*

*[The written statement shall also contain a statement certifying authenticity of document(s) filed. Where copy(ies) of document(s) are filed, it shall be specified in the index as to in whose custody, power and control are the origin(s) thereof. Service of summons for the purpose of this Rule shall only be deemed to be complete after inspection is provided by the Plaintiff, if such inspection is sought by an application moved within a period of 7 days from the receipt of first set of summons.]*

- (ii) *[Any party which seeks to inspect the originals of any documents shall give a notice for inspection and the inspection shall be given at a mutually convenient location within one week of receipt of the notice.]*

**7. Affidavit of admission / denial of documents, even if replication not filed.** *—Irrespective of whether the plaintiff files the replication or not, the plaintiff shall be bound to file affidavit of admission / denial of documents filed by the defendant along with the written statement within the time permissible for filing replication. In case the plaintiff fails to file the said affidavit, the documents filed by the defendant shall be deemed to be admitted. The Court or the Registrar, as the case be, shall exhibit documents admitted by the parties.*

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

**[7A. Document Schedule.—** *After the filing of the affidavit of admission / denial, before framing of issues,*

*parties shall jointly prepare a ‘Document Schedule’ in the form provided herein to be presented to the Court.*

**DOCUMENT SCHEDULE**

1	2	3	4	5	6
<i>Particulars of Documents</i>	<i>Plaintiff's Admission / Denial</i>	<i>Defendant No.1's Admission / Denial</i>	<i>Defendant No.2's Admission / Denial</i>	<i>Defendant No.3's Admission / Denial</i>	<i>Court Order</i>
<i>Plaintiff's document</i>					
<i>Defendant's document</i>					

*\*Parties are to write ‘Admit’/‘Deny’ against each document. In case, receipt of a document is admitted and contents are denied, parties may write Admit (Receipt).*

*The Court would make an endorsement as to the exhibited documents in last Column of the Schedule. The ‘Document Schedule’, duly containing the Exhibit Nos, if any, shall form part of the proceedings of the day.*

*The Court may also direct filing and preparation of a similar ‘Document Schedule’ before the stage of final arguments.]*

**10. Counter-claim by defendant.** – (a) *A defendant in a suit, in addition to his right of pleading as set-off under Order VIII, rule 6 of the Code may set up by way of counter-claim against the claims of the plaintiff, a right or claim, whether such counter-claim is founded in damages or otherwise. The counter-claim shall be numbered separately, in accordance with categorization and nomenclature, as provided in these Rules.*

(b) *Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*

(c) *Rules relating to complaints shall apply mutatis mutandis to Counter Claim. Rules 2 to 8 of this Chapter shall also apply mutatis mutandis to counter-claim.*

*11. Counter-claim to be specifically pleaded. – Where any defendant seeks to rely upon any grounds as supporting the right of counter-claim, he shall, in his written statement, state specifically that he does so by way of Counter Claim.*

*Where a defendant sets up a counter-claim, the Court on the application of the plaintiff, made in that behalf at any stage of the proceedings, and after hearing the defendant, may make an order directing that the counter-claim may be proceeded with in accordance with these Rules.”*

21. It is also deemed appropriate to set out herein below the Rule 4 of Order XI of CPC as applicable to Commercial Courts Act, prescribing the form of affidavit of admission / denial of documents:

*“4. (1) Each party shall submit a statement of admissions or denials of all documents disclosed and of which inspection has been completed, within fifteen days of the completion of inspection or any later date as fixed by the Court.*

*(2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:—*

*(a) correctness of contents of a document;*

*(b) existence of a document;*

*(c) execution of a document;*

*(d) issuance or receipt of a document;*

*(e) custody of a document.*

*Explanation.—A statement of admission or denial of the existence of a document made in accordance with sub-rule (2)(b) shall include the admission or denial of the contents of a document.*

*(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.*

(4) *Any party may however submit bare denials for third party documents of which the party denying does not have any personal knowledge of, and to which the party denying is not a party to in any manner whatsoever.*

(5) *An Affidavit in support of the statement of admissions and denials shall be filed confirming the correctness of the contents of the statement.*

(6) *In the event that the Court holds that any party has unduly refused to admit a document under any of the above criteria,— costs (including exemplary costs) for deciding on admissibility of a document may be imposed by the Court on such party.*

(7) *The Court may pass orders with respect to admitted documents including for waiver of further proof thereon or rejection of any documents.”*

22. It is not as if the provision in Rule 3 of Chapter VII, of the written statement being not taken on record unless accompanied with an affidavit of admission / denial of documents was introduced only with effect from 1<sup>st</sup> November, 2018. The said provision in Rule 3 of Chapter VII existed prior to the notification dated 16<sup>th</sup> October, 2018 also. However, the form of the affidavit of admission / denial of documents was provided for the first time with effect from 1<sup>st</sup> November, 2018, by prescribing the same to be in accordance with the provisions of Order XI Rule 4 of the CPC as aforesaid.

23. The core question for consideration is, whether the only consequence of non-filing of the affidavit of admission / denial of documents along with the written statement is of the documents filed by the plaintiff being deemed to be admitted by the defendant OR of the written statement being not taken on record and the defendant

being in the position of a defendant who has not filed the written statement.

24. On first blush it appears that there is indeed inconsistency / contradiction, in Rule 3 on the one hand, providing that written statement without affidavit of admission / denial shall not be taken on record and Rule 4 on the other hand, providing that the effect of non-filing of affidavit of admission / denial shall be of the documents being deemed to be admitted.

25. I have wondered, whether the two Rules read together have the effect of providing that on non-filing of affidavit of admission / denial with written statement, though the written statement has to be read but the documents of plaintiff deemed to be admitted. However to hold so, would tantamount to rendering otiose the words “.....without which the written statement shall not be taken on record” in Rule 3 supra and negate the bar in Rule 3 to taking the written statement on record if unaccompanied with an affidavit of admission / denial of documents.

26. It is the settled rule of statutory interpretation that interpretation which renders otiose any part of a statute, should be avoided.

27. On the contrary the effect of holding that in such a situation, the written statement shall be deemed to have been not filed and the documents filed by the plaintiff deemed to be admitted, would allow full play to both Rules, without making any part thereof otiose. On further consideration, no inconsistency / contradiction is found in the two Rules. This interpretation is also in consonance with the legislative intent.

28. Such interpretation is also found to be in consonance with the spirit behind overhauling of the Delhi High Court (Original Side) Rules, 1967 and enactment of the 2018 Rules. With the experience of over fifty years of working of the 1967 Rules, attempt was made in the 2018 Rules to do away with the bottlenecks in the proceedings in the suits on the Original Side of this Court. One of such bottlenecks was the stage of admission / denial of documents, at which the suits remained pending, in large number of cases, for years and thereafter also not serving any purpose of expediting trial, with vague denials being made, putting the opposite party to proof of documents at the cost of consequent delays. Order XII Rule 2A of the CPC, as existed since amendment thereof of 1976, though provided that a document, which a party is called upon to admit, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of that party or in reply to notice to admit, shall be deemed to be admitted but also provided that where a party unreasonably neglected or refuses to admit a document after service of notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation. The same in working, led to, as aforesaid, a practice of generally denying everything in pleadings, implicitly also documents and taking advantage of resultant delays in proof of documents. This resulted in suits, most of evidence wherein was documentary, also being not decided expeditiously owing to delays in proof of documents. To eliminate such malady, in the new Rules provisions aforesaid were incorporated, making affidavit of admission / denial of documents mandatory and providing stringent

consequences of non-filing of affidavit of admission / denial of documents to prevent a party from abusing the process of Courts, to its own advantage and to the prejudice of opposite parties. The Scheme in entirety, as set out hereinabove, shows that the same consequences as for defendant, also follow for plaintiff for non-filing of affidavit of admission/denial of defendant's documents.

29. To, inspite of aforesaid changes in Rules hold, that in such a situation the written statement shall be read though the documents filed by the plaintiff deemed to be admitted, has the potential of resulting in anomalous situation. The senior counsel for the plaintiff has canvassed that though the plaintiff did not file affidavit of admission / denial of documents along with the written statement to the Counter Claim but has in the written statement to the Counter Claim, dealt with the documents. Holding, that the written statement containing a denial of documents will be read, would come in the way of giving full effect to the deemed admission of the documents provided for in Rule 4, as happens under Order XII Rule 2A supra of CPC and undo the effect of the new Rules.

30. Under Order VIII Rule 10 of the CPC, upon non-filing of written statement, the Court has discretion, depending on facts, to either pronounce judgment forthwith or direct the plaintiff to prove his claim. Deemed admission by the defendant of the documents of the plaintiff, under Rule 4 supra, will also result in the Court, where defendant has not filed affidavit of admission / denial with written statement, on the basis of admission of documents pass a decree

forthwith rather than relegating the party to proof of his claim based on documents.

31. I thus hold, that in the event of the written statement being filed without affidavit of admission / denial of documents, not only shall the written statement be not taken on record but the documents filed by the plaintiff shall also be deemed to be admitted and on the basis of which admission the Court shall be entitled to proceed under Order VIII Rule 10 of the CPC.

32. It is also deemed appropriate to clarify that what has been held by the Supreme Court in *SCG Contracts India Pvt. Ltd.* supra qua filing of the written statement would equally apply to filing of the affidavit of admission / denial of documents and time for filing thereof also cannot be extended beyond the maximum permitted.

33. That brings me to the application of the law aforesaid to the factual scenario in the present case.

34. In the present suit though the Counter Claim was filed with advance copy to the counsel for the plaintiff on 23<sup>rd</sup> February, 2018, in accordance with the order dated 29<sup>th</sup> January, 2018, but the same did not come on record till 30<sup>th</sup> July, 2018. For this reason, I am of the view that the time for filing written statement has to be computed therefrom and 30 days therefrom within which written statement was to be filed expired on 30<sup>th</sup> August, 2018 and the maximum time of 120 days therefrom expired on 30<sup>th</sup> November, 2018.

35. The written statement to the Counter Claim filed on 19<sup>th</sup> April, 2018 with copy thereof delivered to the counsel for the defendant /

Counter Claimant on 2<sup>nd</sup> May, 2018 and re-filed on 10<sup>th</sup> October, 2018 along with affidavit of admission / denial of documents thus though was beyond 30 days but within the maximum period of 120 days.

36. I thus allow the written statement to be taken on record subject to payment of costs of Rs.3 lacs to the counsel for the defendant.

37. The applications are thus disposed of by i) permitting the supporting affidavit to IA No.5229/2019 to be in electronic apostilling; and, ii) taking the written statement as well as affidavit of admission / denial of documents on record.

**CS(COMM) 1683/2016 & CC(COMM) 38/2018**

38. List for framing of issues, if any, on 13<sup>th</sup> August, 2019.

**RAJIV SAHAI ENDLAW, J.**

**MAY 15, 2019**  
**APRIL 09, 2019**  
'gsr'..

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