



CNR: KAHC010086412022

NC: 2026:KHC:40509
W.P. No.4324/2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 3RD DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.4324/2022 (GM-CPC)

BETWEEN:

SMT. DAKSHA RAVINATH
W/O DR. T.R. RAVINATH
AGED 75 YEARS
R/AT NO.24, VIVEKANANDA ROAD
YADAVAGIRI, DEVARAJA MOHALLA
MYSURU 570020.

...PETITIONER

(BY SRI. VARUN, ADV., FOR
SRI. SACHIN B.S. ADV.,)

AND:

1. M/S. BENCHMARK SIGNATURE HOMES
HAVING ITS OFFICE AT NO.4530
ST. MARY'S ROAD, 1ST CROSS
N R MOHALLA, MYSURU 570007
REP. BY ITS PARTNER.
2. MR. MOHAMMED ALI KHAN
AGED 42 YEARS
R/AT NO.4530, ST. MARY'S ROAD
1ST CROSS, N R MOHALLA
MYSURU 570007.

...RESPONDENTS

(BY SRI. CHANDRAKANTH R. GOULAY, ADV., [ABSENT])

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA



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THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DTD 11.01.2022 IN COM.O.S.NO.86/2020 ON THE FILE OF COMMERCIAL COURT AND II ADDITIONAL DISTRICT AND SESSIONS JUDGE, MYSURU, VIDE ANNEX-A, CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONER SEEKING PERMISSION TO FILE WRITTEN STATEMENT IN THE INTEREST OF JUSTICE AND EQUITY & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated 11.01.2022 passed in Com.O.S.No.86/2020 by the Commercial Court and II Additional District and Sessions Judge, Mysuru (for short, '***the Commercial Court***').

2. Sri.Varun, learned counsel for Sri.Sachin B.S., learned counsel appearing for the petitioner submits that respondent-plaintiff had filed the suit for specific performance of the agreement of sale before the Civil Court. Thereafter, the said suit came to be transferred to the Commercial Court on 04.02.2020. Thereafter, the



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petitioner, who is the defendant in the suit, entered appearance before the Commercial Court on 11.03.2020, but he could not file the written statement in the suit, hence filed an application under Section 151 of the Code of Civil Procedure, 1908 (for short, '**the CPC**') seeking leave of the Court to take the written statement on record and the said application was filed on 02.08.2021. However, the Commercial Court under the impugned order, rejected the application on the ground that the application filed for accepting the written statement is beyond the period of 120 days. It is submitted that the Commercial Court calculated 120 days from the date of service of summons to the defendant in the suit before the Civil Court and also from the date of entering appearance of the petitioner-defendant before the Commercial Court, by ignoring the fact that the said period of calculation falls within the exemption period in view of the COVID-19 pandemic. In support of his contention, he placed reliance on the following decisions:



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- i. Prakash Corporates v. DEE VEE Projects Limited¹***
- ii. M/s.American Road Technology and Solutions Private Limited and Another v. M.G.Mohan Kumar²***

Lastly, he submits that the Commercial Court has failed to fix the timeline as provided under Section 15(4) of the Commercial Courts Act, 2015. Hence, question of computing the limitation for non-filing of the written statement would not arise. Hence, he seeks to allow the petition with a direction to the Commercial Court to accept the written statement of the petitioner and proceed with the commercial suit.

3. There is no representation for the respondent-plaintiff.

4. I have heard the arguments of the learned counsel for the petitioner and meticulously perused the material available on record.

¹ (2022) 5 SCC 112

² WP No.6011/2020 DD 29.08.2023



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5. The respondent herein had filed the suit in O.S.No.157/2018 on 07.02.2018 before the Principal Senior Civil Judge and CJM, Mysuru, seeking the relief of specific performance of the contract against the petitioner herein. The said suit came to be transferred to the Commercial Court on 04.02.2020.

6. The said suit is re-numbered as Com.O.S.No.86/2020 on the file of the Commercial Court and II Additional District and Sessions Judge, Mysuru. The petitioner-defendant was served with summons in the suit when it was pending before the Civil Court, the petitioner could not file the written statement. Later, the petitioner-defendant filed an application under Section 151 of the CPC seeking permission to file the written statement by condoning the delay. The said application was filed on 02.08.2021. The Commercial Court under the impugned order rejected the application by recording the reasons that the application is filed after the lapse of more than



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1133 days from the date of service of the summons before the civil Court and after a period of 458 days from the date of transfer of the suit to the Commercial Court.

7. It is required to be noticed that if the suit was before the Civil Court, then the effect of amended provision of the CPC pursuant to the Commercial Courts Act, 2015, would not have applied and the petitioner-defendant would have the benefit of the decision of the Hon'ble Supreme Court in the case of ***Salem Advocate Bar Association, T.N. v. Union of India***³ with regard to filing of the written statement before the Civil Court. However, the peculiar facts and circumstances of the case indicates that the suit from the Civil Court was transferred to the Commercial Court on 04.02.2020 and thereafter the petitioner-defendant entered appearance before the Commercial Court on 11.03.2020 and he files application on 02.08.2021 seeking to condone the delay and take the written statement on record. The Commercial Court's

³ (2005) 6 SCC 344



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calculation for computing the delay by taking the date of service of summons before the Civil Court and date of transfer of the suit to the Commercial Court may not be appropriate. To appreciate the aspect of delay in the case on hand, it would be useful to refer the decision of the Hon'ble Supreme Court in the case of **Prakash Corporates** referred supra, wherein the Hon'ble Supreme Court at paragraph Nos.28 to 30 held as under:

"28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] , this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15-3-2020 but, while concluding the matter on 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] , this Court specifically provided for exclusion of the period from 15-3-2020 till 2-10-2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a



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period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government [Vide Section 15 of the Limitation Act, 1963.]). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.

28.1. *Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.*

28.2. *In other words, the orders passed by this Court on 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] , 6-5-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 9 : (2021) 3 SCC (Cri) 799] , 10-7-2020 [Cognizance for Extension of Limitation, In re, (2020) 9 SCC 468] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250*



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: 2021 SCC OnLine SC 947] in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15-3-2020 to 2-10-2021) could still be filed within 90 days from 3-10-2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.

28.3. *Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time-limit for filing the written statement by the appellant in the subject suit did not come to an end on 6-5-2021.*

29. *It is also noteworthy that even before the scope of the orders passed in SMWP No. 3 of 2020 came to be further elaborated and specified in the orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] and 23-9-2021 [Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250 : 2021 SCC OnLine SC 947] , this Court dealt with an akin scenario in SS Group [SS Group (P) Ltd. v. Aaditiya J. Garg, (2022) 11 SCC 445 : 2020 SCC OnLine SC 1050]*



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, decided on 17-12-2020. In that case, in terms of Section 38(2)(a) of the Consumer Protection Act, 2019, 30 days' time provided for filing the written statement expired on 12-8-2020 and the extendable period of 15 days also expired on 27-8-2020. Admittedly, the written statement was filed on 31-8-2020, which was beyond the permissible period of 45 days. The Constitution Bench of this Court has held in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd. [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] that the Consumer Court has no power to extend the time for filing response to the complaint beyond 45 days. After taking note of the applicable provisions of law as also the mandate of the Constitution Bench, this Court referred to the orders until then passed in SMWP No. 3 of 2020 and held that the limitation for filing written statement would be deemed to have been extended.

30. *This Court, inter alia, observed and held as follows : (SS Group case [SS Group (P) Ltd. v. Aaditiya J. Garg, (2022) 11 SCC 445 : 2020 SCC OnLine SC 1050] , SCC paras 10-11)*

"10. In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12-8-2020 and the extended period of 15 days expired on 27-8-2020. This period expired when the order dated 23-3-2020 passed by this Court in Cognizance for



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Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] was continuing.

11. In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] that the extended period of limitation was applicable to all petitions/applications/suits/appeals and all other proceedings. As such, the delay of four days in filing the written statements in the pending proceedings before the National Commission deserves to be allowed, and is accordingly allowed."

8. The co-ordinate bench of this Court in the case of ***M/s.American Road Technology and Solutions Private Limited*** referred supra, in a similar circumstance, at paragraph Nos.6 to 13 held as under:

"6. On hearing the learned counsel for the parties and on perusal of the writ petition papers, the only point which falls for consideration is as to whether the impugned order rejecting I.A.No.1/2019 filed under Section 151 of CPC seeking leave to file written statement by setting aside the order taking "written



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statement and objection not filed” requires interference?

7. The answer to the above point would be in the affirmative for the following reasons:

Admittedly, the suit of the respondent/plaintiff in O.S.No.297/2018 is for recovery of money along with interest and was filed before the normal Civil Court in the year 2018. On establishment of Commercial Court, in terms of the provisions of 2015 Act, the suit of the respondent/plaintiff was transferred to the Commercial Court by order dated 08.02.2019. Admittedly, the petitioners/defendants had entered appearance in the suit on 28.08.2018 and till transfer of the suit to Commercial Court, the petitioners/defendants had not filed written statement. But, they had sought time to file written statement, which was allowed. On transfer of suit to the Commercial Court for the first time, the suit was listed on 19.02.2019 and on the said date the Presiding Officer was on leave and the suit was adjourned to 12.03.2019 and on 12.03.2019, both the learned counsel and parties were absent. The Court noted that “written statement and objections not filed” and adjourned the suit to 20.04.2019. On 20.04.2019, the petitioners/defendants filed I.A.No.1/2019 under Section 151 of CPC along with written statement seeking permission to file written statement, by recalling order dated 12.03.2019.

8. Order VIII Rule 1 of CPC relating to Commercial Court is amended and amended provision insofar as it relates to Commercial Court reads as follows:

“Commercial dispute of a Specified Value:
in its application to any suit in respect of



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commercial dispute of a Specified Value, in Order VIII, in Rule 1, substitute the following proviso, namely:

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 such costs but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the 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.."

A reading of the above would abundantly makes it clear that, where the defendant fails to file written statement within a period of 30 days, he shall be allowed to file the same on such other day, as may be specified, for reasons to be recorded in writing, but which shall not be later than 120 days from the date of service of summons. Further, it makes it clear that if the written statement is not filed within 120 days, on expiry of 120 days from the date of service of summons, the defendant shall forfeit his right to file written statement and the Court shall not take the written statement on record.

9. In the instant case, on transfer of suit O.S.No.297/2018 from normal Civil Court to the Commercial Court by order dated 08.02.2019, the suit was listed on 19.02.2019 before the Commercial Court for the first time and the same was adjourned to 12.03.2019. On 12.03.2019, it was taken that "written statement and objection not filed." The petitioners/defendants admittedly have not filed written statement within 30 days from 19.02.2019, the date on which, the suit was listed for the fist time on transfer to



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the Commercial Court. It is also an admitted fact that the petitioners/defendants have not filed any application before the Commercial Court seeking extension of time to file written statement. But, on 20.04.2019, the petitioners/defendants filed I.A.No.1/2019 under Section 151 of CPC seeking leave to file written statement along with written statement.

10. Admittedly, I.A.No.1/2019 seeking leave to file written statement is filed within 120 days from the first date of listing the suit on transfer before the Commercial Court which date is to be taken as date of service of suit summons in a Commercial suit. In terms of the above extracted proviso, learned Commercial Court Judge has discretion to allow the defendants to file written statement within 120 days from the date of service of summons. In the instant case, 19.02.2019, the date on which the first listing of the suit on transfer to the Commercial Court is to be taken as the date of service of suit summons. From 19.02.2019, the petitioners/defendants had maximum of 120 days time to file written statement.

11. Section 15(4) and proviso to sub-section (4) of Section 15 of 2015 Act reads as follows:

"(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance with Order XV-A of the Code of Civil Procedure, 1908.

Provided that the proviso to sub-rule (1) of rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the



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court may, in its discretion, prescribe a new time period within which the written statement shall be filed."

The above proviso makes it abundantly clear that subrule(1) of Rule 1 of Order V of CPC would not apply to the transferred suit or application to the Commercial Court and the Commercial Court in its discretion shall prescribe a new time period within which, the written statement shall be filed. The Commercial Court failed to follow the mandate of proviso to sub-Section (4) of Section 15 of 2015 Act.

12. Proviso to sub-Rule (1) of Rule 1 of Order V of CPC which prescribes time line for filing written statement would not apply to the commercial suits transferred from normal Civil Courts to the Commercial Courts in terms of proviso to sub-Section (4) of Section 15 of 2015 Act. The amendment to proviso to Order VIII Rule 1 of CPC insofar as Commercial Courts Act is concerned, it provides discretion to the Commercial Court Judge to extend time up to 120 days to file written statement. The learned Commercial Court Judge has failed to exercise his discretion in the matter of taking on record the written statement in the present case in proper perspective.

*13. It is settled position of law that in terms of **SCG CONTRACTORS INDIA PRIVATE LIMITED (supra)**, in the normal course in a commercial suit, if the defendants fail to file written statement within 120 days, defendants would forfeit their right to file written statement. But the same would not be applicable to the facts of the present case and 120 days to file written statement in the present case is to be counted from 19.02.2019, the first date of listing of suit on transfer to the Commercial Court. In the above circumstances, from 12.03.2019, the date of which the Commercial Court noted that "written statement and objection not*



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filed", the statutory period of 120 days had not lapsed for filing written statement."

9. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court as well as the decision of the co-ordinate Bench of this Court in the aforesaid decisions, I am of the considered view that the petitioner-defendant has a benefit of the order of exemption of period of limitation from 15.03.2020 to 02.10.2021 as held by the Hon'ble Supreme Court in the case of ***Prakash Corporates*** referred supra. If that period is excluded from the date of appearance of the petitioner-defendant before the Commercial Court i.e. on 11.03.2020, then the filing of application by the petitioner-defendant would be within the period of 120 days. It is also required to be noticed that the respondent-plaintiff has stated before the Commercial Court that the plaintiff has no objection to accept the written statement. The same is taken note of. The Commercial Court has



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committed an error in rejecting the application filed by the petitioner-defendant.

10. For the aforementioned reasons, I proceed to pass the following:

ORDER

- i. The writ petition is ***allowed***.
- ii. The impugned order dated 11.01.2022 passed in Com.O.S.No.86/2020 by the Commercial Court and II Additional District and Sessions Judge, Mysuru, is hereby set aside. Consequently, application filed by the petitioner-defendant under Section 151 of the CPC is allowed.
- iii. The Commercial Court is directed to accept the written statement filed by the petitioner-defendant and proceed in the matter in accordance with law.

No orders as to costs.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE