



IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Civil Revision No.89 of 2026

12th August, 2026

Ritu Kukreti Jain

-----Revisionist

Versus

M/s New Wood Industries and Another

----Respondents

Presence:-

Mr. Sagar Kothari, learned counsel for the revisionist.

Mr. Neeraj Garg and Mr. Rajendra Arya, learned counsel for respondent no.1/plaintiff.

JUDGMENT : (per Mr. Manoj Kumar Gupta C. J.)

1. Heard learned counsel for the parties.
2. By means of present revision filed under Section 115 CPC, the revisionist, who is defendant no.2 in a suit pending before the Commercial Court, Dehradun has challenged its order dated 13.05.2026 declining to take on record her written statement.
3. The plaintiff / respondent is a partnership firm. It preferred the suit, bearing Original Suit No.565 of 2021, originally before the regular civil court, against the revisionist and opposite party no.2 herein, for recovery of a sum of ₹21,10,454.53 and interest on the said amount since 06.07.2019 and cost of the suit.
4. According to the plaint case, the revisionist and opposite party no.2 herein are husband and wife and



Directors of M/s Sara Abode Pvt. Ltd. They had made purchases of wood items from the plaintiff firm in the year 2017 and a sum of ₹21,10,454.53 remained due on that account which despite notices was not paid to the plaintiff-firm.

5. The suit as noted above, was originally instituted on the regular side. By an order dated 22.02.2024, the trial court i.e. Additional Civil Judge (Sr. Div.), Dehradun returned the plaint for being presented before the Commercial Court as the dispute between the parties was a commercial dispute and, therefore, cognizable by Commercial Court. Thereafter, the suit was instituted by the plaintiff / respondent before the Commercial Court and it came to be registered as Original Suit No.129 of 2024.

6. The defendant / revisionist was served with summons by registered post on 05.08.2024. On 21.08.2024, she entered appearance in the suit through a counsel and on that date an adjournment application was filed on behalf of the revisionist seeking time to file written statement. The suit was adjourned on that date and the defendant / revisionist was granted time to file written statement.

7. The defendant / revisionist did not file the written statement for a considerable period. Ultimately, after eight months of service of summons, the written statement was filed. The Trial Court by the impugned order dated



13.05.2026 has declined to take on record the written statement holding that the period prescribed for filing of the written statement under Order 8 Rule 1, as amended by the Schedule to the Commercial Courts Act, 2015 having expired long back, the same cannot be taken on record. Accordingly, the application bearing Paper No.457, filed by the revisionist, for taking on record the written statement has been rejected.

8. Section 16(1) of the Commercial Courts Act, 2015 provides as under:

“16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.”

9. The substitution of the proviso to Order 8 Rule 1 CPC by the Schedule to the Commercial Courts Act, 2015 is as follows:

(i) in Rule 1, for the proviso, the following proviso shall be substituted, 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 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 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.

Further, in Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:



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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.

10. In Order 8 Rule 10 CPC, the following proviso was inserted:

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.

11. In **SCG Contracts (India) Private Limited Vs. K.S. Chamankar Infrastructure Private Limited & Others (2019) 12 SCC 210**, the Hon'ble Supreme Court, while considering the provision of CPC as stood modified by the Schedule to the Commercial Courts Act, held that period of 120 days provided therein cannot be extended by the Courts even with the aid of Section 115 CPC. The relevant observations are as follows:

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.



12. The Hon'ble Supreme Court in the said judgment had also considered the law laid down in its previous judgments in ***Kailash Vs. Nanhku (2005) 4 SCC 480 and Salem Advocate Bar Assn.(2) Vs. Union of India (2005) 6 SCC 344*** and held that the law laid down therein would not apply to the proceedings before the Commercial Court in view of the amendments made to the CPC by the Schedule.

13. Learned counsel for the revisionist submits that the revisionist filed an application under Order 1 Rule 10 CPC for deletion of her name from the suit and the said application came to be rejected by the Commercial Court by order dated 24.03.2025. Thereafter, the revisionist filed WPMB No.314 of 2025 before this Court but, the writ petition was permitted to be withdrawn with liberty to the revisionist to agitate the issue relating to her misjoinder at the time of trial.

14. Accordingly, it is submitted that the aforesaid period was liable to be excluded while counting the period provided under Order 8 Rule 1 CPC as applicable to the Commercial Courts.

15. The provisions of Order 8 Rule 1 CPC as amended by the Schedule prescribes an outer limit of 120 days from the date of service of summons for filing written statement



and there is explicit interdiction for extending time beyond the prescribed period.

16. The defendant, who took the risk of not filing the written statement, in anticipation that her application for deletion of name would be allowed, has to suffer the consequences. There is no power vested in the Commercial Court to extend the period of limitation on that count.

17. Learned counsel for the revisionist has placed reliance on the judgment of the Hon'ble Supreme Court in ***Raj Process Equipments and Systems Pvt. Ltd. and Others Vs. Honest Derivatives Pvt. Ltd. 2022 SCC OnLine SC 1877*** in support of his contention that even after expiry of the prescribed period of limitation, the written statement could be accepted. However, the law laid down in the said judgment is not at all applicable to the facts of the instant case. Therein the suit was filed before the regular Civil Court and, on 03.07.2018, the following order was passed:

"The Defendant No. 3 and 4 in spite of service of suit summons (Exh.6) failed to appear and defendant No. 1 and 2 in spite of giving opportunity failed to file their written statement. Hence, the suit proceeded ex-parte against defendant no. 3 and 4 and without written statement against defendant no. 1 and 2."

18. Subsequently, on 11.08.2008 the District Court, Jalgaon was designated as a Commercial Court, in terms of the Commercial Courts Act, 2015 and the suit pending before the regular Civil Court was transferred to the



Commercial Court. After transfer, defendants moved applications for condonation of delay and recall of the order dated 03.07.2018. All the applications were rejected by the Trial Court on 11.04.2019 relying on the amended provision of Order 8 Rule 1 CPC. The order passed by the Trial Court was affirmed by the High Court.

19. Before the Hon'ble Supreme Court, reliance was placed on the judgment of the Supreme Court in **SCG Contracts (India) Private Limited (supra)** in contending that the period provided under the proviso to Order 8 Rule 1 CPC was mandatory and the same could not be extended. However, the Supreme Court noting that opportunity to file written statement was forfeited at the stage when the suit was pending before the regular Civil Court, held that the amended provision of CPC as applicable to proceedings before the Commercial Courts would not apply. Accordingly, it was also held that the judgment in **SCG Contracts (India) Private Limited**, which was based on interpretation to the CPC as amended by the Schedule to the Commercial Courts Act, would not apply. The relevant observations are as under:

“13. But we do not agree. The suit that became the subject matter of dispute in SCG Contracts India Private Limited, appears to have been filed before the Commercial Court and not before the normal Civil Court. Insofar as the normal Civil Courts are concerned, it is the proviso to Order VIII Rule 1 CPC which applies. In Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344, this Court held that the proviso to Rule 1 of Order VIII CPC is directory and not



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mandatory. An exception was carved out in SCG Contracts India Private Limited to this Rule, by this Court insofar as the commercial disputes are concerned by invoking the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, to apply the same principle to a matter where the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in Salem Advocate Bar Association, to the proviso to Order VIII Rule 1 CPC.”

20. However, in the instant case, after the suit was transferred to the Commercial Court, summons were issued to the defendant, and were served on the revisionist / defendant on 05.08.2024. It was, thereafter, that the defendant sought time for filing written statement but did not file the same for almost eight months.

21. Consequently, in the present case, provisions of the CPC as amended by the Schedule to the Commercial Courts Act was applicable and thus, the law laid down by the Hon'ble Supreme Court in the case of ***Raj Process Equipments and Systems Pvt. Ltd. and Others (supra)*** would not apply.

22. In view of the discussion made above, we find no merits in the present revision and the same is, accordingly, dismissed.

23. Pending application, if any, also stands disposed of.

(MANOJ KUMAR GUPTA, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 12.08.2026
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