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

CNR No. DLHC010409972026

+ CM(M) 1921/2026, CM APPL. 58836/2026 & CM APPL.
58837/2026

LUCKNOW NAGAR NIGAM AND ANR. Petitioners

Through: Mr. Anurag Kishore, Mr. Lakhan Kr.
Mishra, Ms. Ritika Srivastava and
Mr. Harsh Kumar, Advs.

versus

M/S RAJ LUBRICANTS & ANR. Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE AJAY DIGPAUL

ORDER
01.09.2026

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1. The present petition has been preferred by the petitioners seeking the following reliefs:

“a) Issue an appropriate order or direction, quashing and setting aside the Impugned Order dated 02.07.2026 passed by the Ld. District Judge (Commercial Court)-03, West, Tis Hazari Courts, Delhi in CS (Comm) No. 614/2025, whereby the defense of the Petitioners was prematurely struck off; And

b) Issue an appropriate order or direction declaring that, upon lawful exclusion of the ex-parte period and the Section 12A Lok Adalat negotiation period, the Petitioners remain within the statutory 120-day window, and consequently direct the Ld. Commercial Court to take the Written Statement of the Petitioners on record; or

c) In the alternative, issue an appropriate order or direction explicitly protecting the Petitioners' right to extensively cross-examine the witnesses of Respondent No. 1 regarding the suppressed Revised Invoice dated



08.07.2021 and the settlement communications, to expose the misrepresentation perpetrated upon the Court;

d) Pass any such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. Briefly stated, in 2025 the respondent/plaintiff instituted the underlying commercial suit for recovery of Rs. 7,57,425/- including IGST and interest @ 18% per annum i.e., Rs. 4,09,009/- and damages of Rs. 6,00,000/-. Petitioner No. 1 and petitioner No. 2 herein are defendant No. 3 and defendant No. 1 in the underlying suit, respectively.

3. The petitioners were served with summons on 04.12.2025 and 05.12.2025 and due to non-appearance, the learned Trial Court *vide* the order dated 16.12.2025 proceeded *ex-parte* against the petitioners.

4. Pursuant thereto, on 07.02.2026 the petitioners filed an application under Order IX Rule 7 of the CPC seeking to set aside the *ex-parte* order. The said application came to be allowed by the learned Trial Court *vide* order dated 24.03.2026 and the *ex-parte* order was thereby set aside. The relevant portion of the order dated 24.03.2026 is reproduced hereunder:

"As far as the first part is concerned, the application was supposed to be filed at the earliest and by/before the next date of hearing. In the given context, the next date of hearing was 02.02.2026 since after the *ex-parte* order dated 16.12.2025. However, the application was filed on 07.02.2026 (e.filed as well as physical filing). Thus, it was not in consonance with the given provision i.e. u/o IX rule 7 CPC. However, taking into consideration the fact that the maximum permissible period for filing the WS i.e 120 days (reckoned from 04.12.2025 and 05.12.2025 respectively) is yet to expire, the application in hand is disposed of as allowed with cost of Rs. 7000/- to be deposited with DLSA (W) prior to filing of the WS in every eventuality. Application stands disposed of accordingly.

Be put 22.04.2026 for WS. The Defendants would be at liberty to file the WS before the expiry of 120 days reckoned from the date of service as above."



5. Subsequently, the learned Trial Court *vide* order dated 22.04.2026, at the joint request of the parties, put up the matter before the Lok Adalat to be held on 09.05.2026. However, the parties could not arrive at a settlement. At this juncture, no written statement had been filed by the petitioners and the 120-day statutory timeline to file the same, reckoned from the date of service, had also elapsed.

6. Thereafter, the learned Trial Court *vide* the impugned order dated 02.07.2026 struck off the defence of the petitioners and listed the matter for plaintiff's evidence. The relevant portion of the impugned order reads thus:

“No WS has been filed on behalf of the Defendants No.1 & 3 in compliance of the order dated 24.03.2026. Period of 120 days has also lapsed. In view of the same, Defence of the Defendants No. 1 & 3 is hereby struck off. Be put up on 13.08.2026 for PE.”

7. Aggrieved thereby, the petitioners have preferred the present petition.

8. Mr. Anurag Kishore, learned counsel for the petitioners submits that the 120-day statutory period prescribed under Order VIII Rule 1 of the CPC, as amended by the Commercial Courts Act, 2015, remained halted during the subsistence of the *ex-parte* period i.e., from 16.12.2025 to 24.03.2026 and also during the period wherein the Lok Adalat settlement was underway i.e., from 22.04.2026 to 09.05.2026. Therefore, upon the exclusion of these periods, the petitioners remained well within the statutory timeline and had 25 days remaining, to place their written statement on record.

9. Heard. Perused the record.

10. The law regarding the timeline to file written statement in a commercial suit is no longer *res integra*. The Apex Court has unequivocally held in **SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure**



(P) Ltd. (2019) 12 SCC 210 that the outer limit of 120-days prescribed under Order VIII Rule 1 of the Code of Civil Procedure, 1908 as amended by the Commercial Courts Act, 2015 is mandatory and admits no exceptions. This timeline runs strictly and continuously from the date of service of summons, without any provision for pausing during the pendency of an *ex-parte* order or Lok Adalat proceedings. The observations of the Apex Court in *SCG Contracts (India) (P) Ltd. (supra)* are reproduced hereunder:

“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.”

11. Insofar as the present case is concerned, the petitioners were admittedly served on 04.12.2025 and 05.12.2025 and thus the outer limit of 120-days expired on 03.04.2026 and 04.04.2026 respectively.

12. A bare perusal of the record reflects that, the learned Trial Court while allowing the petitioner's application under Order IX Rule 7 of the CPC *vide* order dated 24.03.2026, explicitly granted liberty to the petitioners to place their written statement on record within the statutory period of 120-days, reckoned from the said date of service. However, despite such liberty, the petitioners remained completely passive.

13. The petitioners neither placed their written statement on record nor filed any application seeking condonation of delay with supporting grounds.



As on 02.07.2026, nearly seven months had elapsed since the service of summons and yet, no written statement was placed on record.

14. In view of the aforesaid observations, it is clear that the learned Trial Court rightly struck off the defence of the petitioners and the impugned order suffers from no jurisdictional infirmity, perversity, or error apparent on the face of the record warranting interference under the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

15. Accordingly, the present petition along with pending application(s), if any, stands dismissed.

AJAY DIGPAUL, J

SEPTEMBER 1, 2026/ar/as