

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION (L) NO.1547 OF 2019
IN
COMMERCIAL SUIT NO.182 OF 2019**

Sanjay Raghunath Prasad Gupta

..Plaintiff

Vs.

ICICI Bank Ltd. & ors

..Defendants

Mr. Piyush Raheja I/b Santosh D. Thakur for Plaintiff

Ms. Anamika I/b Indus Law for Defendant No. 1/Applicant in NMCDL/1554/2019;

Ms. Mahima Sinha I/b Charles J. Desouza for Defendant No. 2/Applicant in NMCDL/1547/2019 (not on board).

CORAM : K.R.SHRIRAM, J.

DATE : 4th JULY 2019

P.C.:

1 Not on board. By consent taken up for hearing.

2 This application is to condone the delay in filing the written statement. Writ of summons was served on defendant no.2 on 25th February 2019. Order VIII Rule 1 of CPC as amended under Act 4 of 2016, reads as under:

“1. Written statement:- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence.

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.”

3 Order VIII Rule 1 provides “defendant shall, within 30 days from the date of service of summons on him, present the written statement of his defence..... but which shall not be later than 90 days from the date of service of summons.....” The expression used is from the date of service of service of summons. It should mean the date of service has to be excluded. Even practically, to include that date will be a disaster. The courier might have reached defendants later in the evening when the date is as good as over.

4 Time would, therefore, start ticking from 26th February 2019. The writ of summons being served on 25th February 2019, 30 days period would expire on 27th March 2019 and the further 90 days, i.e., 120th day will expire on 25th June 2019. Defendant no.1 has lodged this notice of motion on 25th June 2019, which is the last date. Time from the date notice of motion was lodged until it is heard, has to be excluded. Written statement in any event has been declared on 25th June 2019.

5 Proviso to Order VIII Rule 1 states “..... he shall be allowed to file the same on such other date as may be specified by court, for the reasons to be recorded in writing and on payment of costs” For the court to give reasons, it has to first come from applicant. The reason in the affidavit in support can be found only in paragraphs 2(a) to 2(f) of the affidavit in support. Though, I understand the explanation given in

paragraphs 2(a) to 2(c), 2(d) and 2(f) are not acceptable. Applicant has not explained when it came to know that there was a new officer appointed by defendant no.1 and even if new officer has been appointed, whether the earlier officer has left the organisation or not, there is nothing to show what efforts were made to contact the earlier officer to provide the details. Apart from that, if the officer in charge is on leave does not mean the company like defendant no.2-Assets Reconstruction Company (India) Ltd., will not have anyone else in the whole organization to sign and declare the written statement.

6 At the same time, the Apex Court in **SCG Contracts India Pvt Ltd. Vs. K. C. Chamankar Infrastructure Pvt Ltd.**¹ has held that if the written statement is not filed within 120 days from the date of service of the summons, defendant would forfeit its right to file the written statement. Therefore, I would be inclined to grant the application for condonation of delay, particularly some of the reason given are acceptable to me. Mr. Raheja submitted that if the court was inclined to consider favourably to applicant, then applicant should be put to terms because plaintiffs also have incurred cost and Order VIII Rule 1 also says “on payment of costs....”. Mr. Raheja is justified.

7 In the circumstances, notice of motion is allowed in terms of prayer clause (a), subject to defendant no.2/applicant paying a sum of

1 2019 scc online SC 226

Rs.25,000/- as cost to plaintiff. This amount shall be paid within two weeks from today by way of cheque drawn in favour of the advocate on record for plaintiff. Registry to accept the written statement but take the same on record only upon applicant satisfying the registry that the costs as awarded above has been paid. Applicant is also put to notice that if the amount is not paid within the time mentioned above, written statement will not be considered or taken on record at all.

8 Notice of motion accordingly stands disposed.

GENERAL

9 As far as defendant no .3 is concerned, Ms Sinha appearing for defendant no.2 states that corporate insolvency process against defendant no.3 is filed in NCLT, Ahmedabad and a moratorium has been granted on 26th April 2019. Mr. Raheja requests the matter be stood over for directions so that he can take instructions whether plaintiff wants to prosecute the suit against defendant no.3.

10 Suit be listed for directions on 19th July 2019.

(K.R. SHRIRAM, J.)