

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7677 OF 2020

The Chief Officer,
Shrigonda Municipal Council,
Taluka Shrigond, Dist.
Ahmednagar.

... **Petitioner.**

VERSUS

- 1) The State of Maharashtra,
Through Secretary Urban Development
Department, Mantralaya,
Mumbai-32.
- 2) The Director/Commissioner,
Municipal Council Administration,
Directorate Maharashtra State,
3rd Floor, Govt. Transport Service
Building, Sir Pochkhanwala Road,
Worli, Mumbai.
- 3) The Collector and District Magistrate
Ahmednagar, District Ahmednagar.
- 4) M/s. R.R. Kapoor,
(Engineers and Contractors)
Through its partner Mr. Rishi Rajesh
Kapoor, Age 39 years, Occ. Contractorship,
Office at Prerna Agrade, A-204,
First Floor, Opp. Tarakpur Bus Stand,
Ahmednagar, Dist. Ahmednagar

... **Respondents.**

...

Advocate for the Petitioner : Mr. Prashant N. Khedkar.
A.G.P. for the Respondents No. 1 to 3 : Mr. S.N. Morampalle.
Advocate for the Respondent No. 4 : Mr. J.N. Singh.

CORAM : MANGESH S. PATIL, J.
DATE : 10.12.2020.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent

of both the sides the matter is heard finally at the stage of admission.

2. The petitioner, which is the original defendant No. 4 in a Commercial Suit No. 1/2019 currently pending before the Commercial Court at Shrigonda being headed by the learned District Judge-1 is before this Court being aggrieved and dissatisfied by the rejection of its application (Exhibit 23) whereby request was made for setting aside the order directing the suit to proceed without its written statement.

3. The learned advocate for the petitioner strenuously submits that the petitioner is a Municipal Council and could not file the written statement in time because of variety of reasons. It was not to gain anything by not filing the written statement. The lapse was not deliberate. It has a genuine case to make out for defending the suit. Refusal to file written statement and contest the suit on merits would deprive it of a valuable right.

4. The learned advocate Mr. Sing for the respondent No. 4 which is the original plaintiff submits that the period of 30 days with a grace period of 90 days provided for filing written statement under Order V Rule 1(1) and the proviso thereunder of the Code of Civil Procedure inserted by the Amendment Act 4 of 2016 in respect of commercial disputes having been held to be mandatory by the Apex Court in the case of *SCG Contracts India Private Limited Vs. K.S. Chamankar Infrastructure Private Limited and others; 2019 AIR (SC) 2691* , there was no discretion left with the learned Judge of the Commercial Court but to reject the application. He therefore submits that when admittedly the written statement was not filed within the statutory period as provided for in that proviso, there is no illegality committed by the learned Judge in dismissing the application.

5. It is apparent that the proviso to Rule 1 (1) of Order V of the Code of Civil Procedure has been inserted while establishing Commercial Courts under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. It prescribes for a specific

period of 30 days for filing the written statement which can be extended by further period of 120 days on a sufficient cause being shown. It specifically provides for the consequences as well to the effect that right to file a written statement would thereafter stand forfeited. One need only to refer to the decision of the Supreme Court in the case of **SCG Contracts India Private Ltd. (supra)**

6. In view of such state of facts and law, no illegality is committed by the learned Judge of the Commercial Court in rejecting the application (Exhibit 23) thereby refusing the petitioner permission to file a written statement in the Commercial Suit.

7. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

mkd/-