

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 619 OF 2021

M/s. G. N. Constructions and Ors

....Petitioners

V/s.

Mr. Christopher Fernandes

.....Respondent

Mr. Suraj Naik for the Petitioners

Ms. Tripty M. Kapadia i/b Joy Legal Consultants for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 23, 2021.

P.C.:

1] Suit being Summary Suit No. 849 of 2018 was converted as Commercial Suit No. 180 of 2020. Summons/notice of such conversion was served on the Petitioner-Defendant on 28/01/2021 and as such, according to him, period of 30 days to file Written Statement to be reckoned under Section 8 of the Commercial Courts Act which is up to 27/02/2021. As such, order impugned refusing him permission to place on record Written Statement and order to proceed Suit against him without Written Statement warrants

interference.

2] Learned counsel for the Respondent supports the order as according to her, in the Summary Suit, Petitioner should have taken recourse to provisions of Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908 seeking leave to defend. After conversion, to Commercial Summary, Section 8 of the Commercial Courts Act will come into play. Still the fact remains that the period from the date of service of Suit summons, Petitioner is delaying filing of the Written Statement.

3] Considered rival submissions.

4] It is not in dispute that Petitioner was served under the provisions of Order V Rule 1 of the Code of Civil Procedure, 1908. The procedure of Commercial Court is made applicable to the Commercial Suit, contemplates initial period of 30 days for filing of written statement, to be reckoned from the date of effecting service of Suit summons on the Defendant. Though in the case in hand, Petitioner

was served in Summary Suit but an intimation of conversion of such Suit into Commercial Summary Suit was given to him on 28/01/2021. In that view of the matter, it can be inferred that it was open for the Petitioner to place on record his written statement in any case by 27/02/2021.

5] In the aforesaid background, order of 'No Written Statement' passed against the Petitioner on 02/02/2021 warrants interference and is accordingly set aside. Petitioner undertakes to file Written Statement by 27/02/2021.

6] Petition stands disposed of in above terms.

[NITIN W. SAMBRE, J.]