

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMON ORDER IN SERIAL NOS. 1 TO 211 ON
THE REGULAR BOARD
DATED 30TH SEPTEMBER 2021**

**CORAM: G.S. PATEL, J
DATED: 1st October 2021**

PC:-

1. This is a common order in 211 Commercial Suits that have been listed today at the instance of the Registry. These date back to 2017. The reason for listing these, and which I will further explain shortly, is that in none of these matters have the Plaintiffs sought to get a Writ of Summons issued.

2. The Commercial Courts Act 2015 (“CCA”) provides for a fast track procedure for the disposal of Suits in the Commercial Division. That is its statutory intent. To that end, it makes several procedural and substantive departures from the general law. These are uniquely applicable to commercial matters. These changes are effected inter alia by amendments to the Code of Civil Procedure, 1908 (“CPC”). Among these is the provision in the CCA that a

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Written Statement by Defendant must be filed within 30 days. The act itself provides a maximum period of 120 days from the date of service of the Writ of Summons within which a Written Statement must be entered.¹ If the Written Statement is not filed within 30 days, the Court may extend time, but not beyond 120 days. This position in law is now settled by decision of this Court in *Axis Bank Ltd vs Mira Gehani & Ors.*²

3. There was recently an issue regarding the correct *form* of service of Writ of Summons. The High Court on its Original Side was following the procedure and applying the Form that applied to regular suits. Specifically, a copy of the Complaint was not sent along with the Writ of Summons. This provision of the High Court (OS) Rules has since been amended. There are similar provisions regarding such suits and service of Writ of Summons without a copy of the Complaint applicable to the Bombay City Civil Court. In itself, this is a peculiar situation and an inconsistency. Everywhere else in the State of Maharashtra, a Writ of Summons is served in accordance with the Civil Procedure Code, specifically Order V Rule 2. This requires that a copy of the Complaint accompany the Writ of Summons. For some reason that no one can explain, the Original Side Rules as they previously existed and the extant Rules of the City Civil Court indicate that in Mumbai, defendants do not need a copy of the complaint to be sent with the Writ of Summons — presumably, Mumbai defendants can enter a written statement without knowing what the

¹ Clause 4(A) of the Schedule, substituting the second proviso to Order V, Rule 1(1).

² 2019 SCC OnLine Bom 358.

plaint says. If they do want a copy, they must seek it from the plaintiffs' advocate.

4. The consequence of this is that in regular suits the time for entering a Written Statement gets enlarged. There is no limitation. In Commercial Suits, on the other hand, because of the special provisions, Written Statements run up against limitation. Further, Section 16 of the Commercial Courts Act makes it clear that the provisions of the CPC prevail over the High Court Rules. This means that for Commercial Suits, the Writ of Summons must be served in accordance with Order V Rule 2 and not the old form and the previous Rules.³

5. This is the background. Defendants in Commercial Suits are under a statutory limitation within which they must enter their written statements. But the CCA contains no explicit provision within which a *plaintiff* in commercial suit must act and comply with procedures, whether this means curing filing defects or, as is the case for all these 211 matters, getting the Writ of Summons issued. To my mind, this is an inconsistency and an imbalance. If commercial matters are to be expedited and fast-tracked, it cannot be that the statutory intent was to disadvantage a defendant and give plaintiffs an unbalanced benefit. To achieve the statutory intent, there must be an obligation for reasonable promptitude on the part of a plaintiff in a commercial suit.

³ Changes or amendments similar to those made to the High Court Rules are evidently required to the City Civil Court rules.

6. I can think of no conceivable reason why the Writ of Summons has not been issued in all these matters. I note that every single one of them is a case where all filing defects are cured and the suits have been in fact received a final number. The plaintiffs must, even in the absence of a statutory provision, be put to some conditions and terms administratively. This is not a question of re-writing the statute. It is merely a question of administrative efficiency to give effect to the intent of the Commercial Courts Act 2015.

7. Hence the following directions:

- A In all these matters, therefore, the plaintiffs must, within three weeks from today, apply for the issuance of a Writ of Summons for each defendant to their suits. The plaintiffs' advocates must furnish sufficient true copies of the plaint, one per defendant.
- B If the issuance of Writ of Summons is not sought within that time, the Registry is authorised to grant an extension not exceeding one week.
- C Any further application for an extension must be made to Court. Advocates are put to notice that any such extension beyond four weeks will be accompanied by an order of costs because the CCA also provides for the imposition of costs. These costs will not be minimal or nominal. Further, since the issuance of Writ of Summons is something that an

Advocate must attend to and has nothing whatsoever to do with the parties, or any need to obtain instructions, those costs may well be imposed on the Advocates in question personally, and not recoverable from the clients under any circumstances.

- D** Within the 10 days of issuance of the Writ of Summons, it must be lodged with the office of the Deputy Sheriff for service.
- E** In any Commercial Suit where any defendant has already appeared at an interim stage, it is open to such a defendant to enter his/her/its Written Statements, if not already done, even without waiting for service of the Writ of Summons. The Registry will accept all such Written Statements filed before service of the Writ of Summons.
- F** It is also open to the Advocates for the plaintiffs in each case to seek an express consent and waiver from the advocates who have already entered appearance for the Defendants waiving service of the Writ of Summons. This is permissible because all these suits are finally numbered. If that is done and the defendants' Advocates do expressly waive service and consent to such a waiver of service, the time to file the Written Statement for such a defendant will begin to run from the date of the waiver.

8. The Prothonotary and Senior Master is requested to issue the appropriate practice note in this regard.

9. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)