

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUIT NO. 333 OF 2016**

Shailesh Nagindas Shah & Ors ...Plaintiffs
Versus
Sharad Jayantilal Mehta & Ors ...Defendants

**WITH
COMM DIVISION NOTICE OF MOTION (L) NO. 1674 OF 2019**

**IN
COMMERCIAL SUIT NO. 333 OF 2016**

**WITH
COMM DIVISION NOTICE OF MOTION (L) NO. 1610 OF 2019**

**IN
COMMERCIAL SUIT NO. 333 OF 2016**

**WITH
COMM DIVISION NOTICE OF MOTION (L) NO. 1605 OF 2019**

**IN
COMMERCIAL SUIT NO. 333 OF 2016**

**WITH
LEAVE PETITION NO. 184 OF 2015**

**IN
COMMERCIAL SUIT NO. 333 OF 2016**

**WITH
COMM DIVISION NOTICE OF MOTION NO. 1819 OF 2019**

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RAMCHNDRA
SANKPAL

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Date: 2021.10.06
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IN
COMMERCIAL SUIT NO. 333 OF 2016
WITH
COMM DIVISION NOTICE OF MOTION NO. 161 OF 2016
IN
COMMERCIAL SUIT NO. 333 OF 2016
WITH
COURT RECEIVER'S REPORT NO. 139 OF 2017
IN
ARBITRATION PETITION NO. 87 OF 2016

Mr Sumeet Bansod, *i/b LJ Law, for the Plaintiff.*
Mr AR Shaikh, *i/b ASD Associates, for Defendant No.1/Applicant in NMCDL/1610/2019.*
Mr Sidharth Samantary, *Khyati Kanani, i/b Kanani & Co, for Respondents Nos. 1 and 2 in NMCD/284/2018.*

CORAM: G.S. PATEL, J
DATED: 5th October 2021

PC:-

1. There is a peculiar situation that has arisen in this Suit. It was instituted on 13th August 2015 as a regular suit, i.e. not one in the Commercial Division. It was finally numbered ("filed") on 5th January 2016. It was even then a regular suit. The Writ of Summons was served on Defendants Nos. 1 and 2 on 17th March 2016, and on Defendants Nos. 3 and 4 sometime in August 2016. At that time, it was still registered as a regular suit. The provisions of limitation to

enter a Written Statement under the Commercial Courts Act 2015, did not apply to the suit or to the Defendants at that time.

2. The suit came to be transferred to the Commercial Division only on 9th January 2017. On 9th February 2017, the Prothonotary and Senior Master passed an order saying that as no Written Statement had been entered, the suit was transferred to the list of undefended causes.

3. That order is clearly wrong and must be set aside.

4. The question is whether any period of limitation applies to these Defendants to enter the Written Statements, and, if so, what should be reckoned a starting of that limitation.

5. When a suit is first instituted in the Commercial Division, the Commercial Courts Act 2015 (“CCA”) clearly states by virtue of its amendment to Order 5 Rule 1, second proviso of the Code of Civil Procedure 1908 (“CPC”), that limitation against the Defendants begins to run from the date of service of the Writ of Summons. A Defendant must enter a Written Statement within 30 days. The Court may extend that time but not beyond 120 days.

6. But what is to happened if the suit is *not* initially instituted as a Commercial Suit at all but only subsequently is transferred to the Commercial Division?

7. One possible view is that limitation will began to run from the date of such transfer. SJ Kathawalla J has held in *Reliance General Insurance Company Limited v Colonial Life Insurance Company (Trinided) Limited*,¹ that the period of limitation and the mandatory timeline of 120 days do not apply to transferred commercial suits i.e. suit first instituted as regular suits but later transferred to the Commercial Division (see paragraph 20). The decision is undoubtedly binding on me and I am bound to follow it. Consequently, therefore, there will be no question of limitation applicable to the Defendants in this suit. The delay if any in filing their Written Statements is condoned.

8. All Written Statements are to be filed and served no later than 26th November 2021.

9. The Motions are disposed of in these terms.

10. No further directions are required in this suit.

11. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)

12019 SCC OnLine Bom 848 : (2019) 6 Bom CR 130.