

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 05.04.2021

Date of Decision : MAY 11, 2021

+ **CM(M) 144/2021 & CM No.6526/2021**

MOTHERS PRIDE EDUCATION INSTITUTION PVT.LTD

..... Petitioner

Through Mr.Jai Mohan, Adv.

versus

SMT. SHUKLA SEHGAL

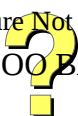
..... Respondent

Through Mr.Kamal Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition has been filed by the petitioner challenging the order dated 25.02.2020 passed by the learned District Judge (Commercial Court-02), West District, Tis Hazari Courts, New Delhi, in Suit, being CS(COMM) No.448/2019, striking off the written statement filed by the defendant/petitioner herein from the record, and the order dated 20.10.2020, dismissing the application filed by the petitioner under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'Code') as amended by the Commercial Courts Act, 2015 (hereinafter referred to as the 'Commercial Courts Act'), refusing to condone the delay in filing of the written statement by the petitioner.



2. The above Suit was filed by the respondent herein on 19.09.2019 under the Commercial Courts Act. Vide order dated 02.11.2019, summons in the suit was issued to be served on the petitioner, and was served on the petitioner on 12.12.2019. The petitioner entered appearance in the suit on 06.01.2020 and prayed for time to file the written statement. The learned Trial Court by its order dated 06.01.2020 directed the petitioner to file the written statement within the prescribed period and posted the suit for 25.02.2020.

3. On 25.02.2020, the petitioner filed its written statement, however, without Statement of Truth, Affidavit and Verification. Even the application seeking condonation of delay in filing of the written statement was not filed by the petitioner. Accordingly, the learned Trial Court vide order dated 25.02.2020 was pleased to direct the written statement to be taken off the record.

4. Due to the outbreak of Covid-19 pandemic and restricted functioning of the Courts, the suit was then taken up for consideration by the learned Trial Court only on 05.08.2020.

5. On 05.09.2020, the petitioner filed another written statement alongwith an application seeking condonation of delay in filing the same, which has been dismissed by the learned Trial Court vide its Impugned Order dated 20.10.2020.

6. The learned Trial Court in its Impugned Order dated 20.10.2020 has held that the written statement and the application having been filed beyond 120 days of service of summons on the petitioner, the delay could not be condoned. The learned Trial Court rejected the submission of the petitioner that as the summons was not issued in the

format as prescribed by the Practice Direction dated 27.11.2015 of this Court, the period for filing of the written statement commenced only on 25.02.2020 when the petitioner gained knowledge that the Suit had been filed under the Commercial Courts Act. The learned Trial Court held that the Practice Direction dated 27.11.2015 was not applicable to the District Courts and no separate format of summons has been prescribed in the Commercial Courts Act, therefore, format of summons as provided in the Code would be applicable to the District Courts. The learned Trial Court has held that therefore, the prescribed period for filing the written statement had commenced from the day of the service of summons on the petitioner and as the delay in filing the written statement is more than 120 days from the service of summons, the Court has no power to condone the same.

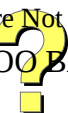
7. The learned Trial Court, relying upon the judgment of the Supreme Court in *Sagufa Ahmed and Ors. v. Upper Assam Plywood Products Pvt. Ltd. and Ors.*, MANU/SC/0697/2020, has further held that order dated 23.03.2020 passed by the Supreme Court in *Re: Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020* will also not come to the avail of the petitioner as the same has only extended the period of limitation for filing of the suit and has not extended the outer limit of time within which only the delay can be condoned.

8. The learned Trial Court further held that the order dated 25.02.2020 taking the written statement of the petitioner off the record had not been challenged by the petitioner and had attained finality, therefore, the petitioner could not be permitted to overreach the order

by way of filing the written statement along with an application seeking condonation of delay.

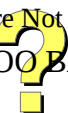
9. The learned counsel for the petitioner submits that the Impugned Order has failed to take note of the fact that the summons that was issued and served on the petitioner was of an ordinary suit. There was no indication to the petitioner in the said summons that the suit had been filed under the Commercial Courts Act. The petitioner came to know of the said fact only on 25.02.2020, when the written statement filed by the petitioner was struck off the record for not having been accompanied with the Statement of Truth and Affidavit of Admission/Denial of documents. Placing reliance on the judgment of this Court in *Media Coverage Pvt. Ltd. v. Harish Nagewala*, 2010 SCC OnLine Del 400 and judgment dated 12.11.2020 in CM(M) 493/2020, *Sh. Sikender v. Crompton Greaves Consumer Electricals Limited & Anr.*, he submits that the time for filing of the written statement would commence only from 25.02.2020 when the petitioner gained knowledge that the Suit had been filed under the Commercial Courts Act.

10. He submits that therefore, the petitioner could have filed its written statement by 25.03.2020, however, prior thereto, the functioning of the Courts was restricted by an Advisory dated 16.03.2020 and completely suspended by an Office Order dated 23.03.2020 issued by the High Court of Delhi on its administrative side. The suspension of the working of the Courts continued till 31.08.2020. In the meantime, the Supreme Court by its order dated 23.03.2020, passed in “*In Re: Cognizance for Extension of*



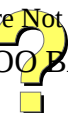
Limitation”, extended the period of limitation for all proceedings with effect from 15.03.2020. He submits that in view of the above development, the period for filing of the written statement by the petitioner also stood extended and therefore, the written statement filed by the petitioner on 05.09.2020 would be within the time prescribed under Order VIII Rule 1 of the Code. In this regard, he places reliance on the judgment of the Supreme Court in ***M/s S.S. Group Pvt. Ltd. v. Aaditiya J. Garg & Anr.***, 2020 SCC OnLine SC 1050.

11. The learned counsel for the petitioner further submits that in terms of the Proviso to Order VIII Rule 1 of the Code as amended by the Commercial Courts Act to be applicable to the commercial disputes, it is in fact mandatory for the Courts to take on record the written statement filed by the defendant within 120 days from the date of service of summons. He submits that therefore, even assuming that the period of filing of the written statement had commenced from 12.12.2019, when the petitioner was served with the summons of the suit, as the period of 120 days had not expired on 15.03.2020, from which date the limitation was suspended by the Supreme Court, the learned Trial Court erred in passing the Impugned Order as the limitation for filing the written statement is 120 days which would stand extended in terms of the order of the Supreme Court in ***Suo Moto Writ Petition (Civil) No.3/2020*** (supra). He submits that therefore, even the judgment of the Supreme Court in ***Sagufa Ahmed and Ors.***(supra) would not be applicable in the facts of the present case.



12. On the other hand, the learned counsel for the respondent submits that the period for filing of the written statement is to be counted from 12.12.2019, when the petitioner was duly served with the summons issued by the learned Trial Court in the suit. He submits that there is no format of summons prescribed as far as the District Courts are concerned, though the same has been prescribed for the High Court. In absence of a prescribed format, the summons issued to the petitioner herein cannot be faulted so as to give a benefit to the petitioner.

13. He further submits that the petitioner was well aware that the suit has been filed under the Commercial Courts Act inasmuch as the respondent in the plaint had mentioned the said fact in paragraph 20 thereof and the title of the suit was also marked as CS(Comm.) in the plaint. He submits that even the copy of the summons served on the petitioner showed that the date of filing of the process fee was 24.09.2019 while the date of issuance of summons was 22.11.2019. He submits that this was so because “one-time process fee” had been deposited by the respondent, which is applicable only to the suits raising commercial disputes. He submits that in fact, the summons of the suit was also served on the petitioner by way of an email dated 17.12.2019 by the counsel for the respondent, which in the subject referred the suit as CS(Comm.). He submits that this was a sufficient indication to the petitioner that the suit was filed under the Commercial Courts Act and therefore, the amended provisions of the Code shall be applicable to the Suit. He submits that therefore, the submission of the petitioner that it was not aware of the suit being



commercial in nature to which the provisions of the Commercial Courts Act would be applicable, is merely an afterthought and cannot be sustained. Placing reliance on the judgment of this Court in ***Rane Prakash and Ors. v. Central Bank of India***, (2003) 105 DLT 373, he submits that a mere defect in the summons would not entitle the petitioner to claim extension of period for filing of the written statement especially where the petitioner otherwise was aware of the suit being filed under the Commercial Courts Act.

14. The learned counsel for the respondent further submits that the original written statement was filed by the petitioner on 25.02.2020, which was beyond the 30 days' period prescribed for filing of the written statement even for Ordinary Suits. The said written statement was not accompanied with any application seeking condonation of delay in filing the same nor was it accompanied with the Statement of Truth or Affidavit of Admission/Denial of documents. The same was, therefore, rightly struck off the record by the learned Trial Court vide its order dated 25.02.2020. In this regard, he places reliance on the judgment of this Court in ***Unilin Beheer B.V. v. Balaji Action Buildwell***, 260 (2019) DLT 478 and the judgment and order dated 11.02.2021 passed by the Division Bench of this Court in RFA(OS)(COMM) 10/2020, ***Brijesh Kumar Agarwal and Ors. v. IFCI Factors Limited and Ors.***

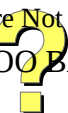
15. He submits that the petitioner never challenged the said order nor sought a review thereof. Instead, the petitioner filed a new written statement on 05.09.2020, this time accompanied with an application seeking enlargement of time for filing of the written statement. He

submits that the learned Trial Court has rightly observed that the remedy of the petitioner was to seek recall of the order dated 25.02.2020 and in absence thereof, the application filed by the petitioner on 05.09.2020 was not maintainable.

16. As far as the applicability of the order dated 23.03.2020 of the Supreme Court extending the period of limitation is concerned, the learned counsel for the respondent submits that the same could be of no avail to the petitioner inasmuch as the period prescribed for filing of the written statement had already expired. Placing reliance on *Sagufa Ahmed and Ors.* (supra), he submits that the order dated 23.03.2020 is not intended to extend and apply even to the period up to which the Court may condone the delay in filing of the written statement.

17. I have considered the submissions made by the learned counsels for the parties.

18. At the outset, the submission of the learned counsel for the respondent that the remedy of the petitioner was to challenge the order dated 25.02.2020 and in absence thereof, the learned Trial Court was right in refusing to take the written statement on record, cannot be accepted. The learned Trial Court was pleased to direct that the written statement filed by the petitioner be struck off from the record on the ground of it not being in compliance with the provisions of the Code as applicable to the Commercial Disputes and as also not being accompanied with an application seeking condonation of delay in filing the Written Statement. Once the petitioner removes such defects, the petitioner was not to seek a recall of the said order. The



application filed by the petitioner to take the fresh written statement on record was to be adjudicated on its own merit. In any case, the petitioner has challenged the said order before this Court in the present petition as well and therefore, the petitioner cannot be non-suited on this ground in the present petition.

19. As far as the plea of the petitioner of the summons not being in the prescribed format, it is to be noted that the Commercial Courts Act, unlike Order XXXVII of the Code, does not prescribe a separate format of summons to be issued by the court in a suit raising commercial disputes. However, this Court issued a Practice Direction dated 27.11.2015 prescribing a proforma for the summons to be issued by the court in suits relating to commercial disputes. The said Practice Direction is reproduced hereinbelow:

“HIGH COURT OF DELHI AT NEW DELHI

No.27309/I/Orgl./DHC Dated: 27.11.2015

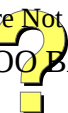
PRACTICE DIRECTION

Hon'ble the Chief Justice, on the recommendations of the Hon'ble Judge In-Charge (Original Side) has been pleased to direct that Summons for settlement of Issues in a Suit relating to Commercial Dispute shall be issued as per proforma given below:-

“Summons for Settlement of Issues in a Suit Relating to Commercial Dispute

(U/s 6 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015 amending Order V, Rule 1 of Code of Civil Procedure, 1908)

*In the Court of
.....of..... Plaintiff*



Against
.....of.....Defendant.

To
(Name, description and place of residence)

Whereas.....has instituted a suit relating to a Commercial dispute against you and you are hereby summoned to file a written statement within 30 days of the service of the present summons **and in case you fail to file the written statement within the said period of 30 days, you 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 120 days from the date of service of summons. On expiry of one hundred and twenty days from the date of service of summons, you shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.**

You are required to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to suit, or who shall be accompanied by some person able to answer all such questions, on the..... day of....., at..... O' clock in the..... noon, to answer the claim; and further you are hereby to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counter-claim, and where you rely on any other document whether in your possession or power or not, as evidence in support or you defence or claim for set-off, or counter-claim you shall enter such documents in a list to be annexed to the written statement.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.



*Given under my hand and the seal of
the Court, this..... day of20.....*

*Judge
By Order*

*(VINOD GOEL)
REGISTRAR GENERAL”*

20. The purpose of issuing the above Practice Direction is to bring about uniformity in the summons to be served on the defendant in a suit relating to commercial disputes so that the defendant is made aware of the mandate and the limitation prescribed under Order VIII Rule 1 of the Code applicable to such a suit. The proforma does not state that it is applicable only to the Commercial Divisions in the High Court. It, on the bare reading of the same, is applicable to ‘a suit relating to Commercial Disputes’.

21. It is important to note here that till the notification of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Ordinance, 2018, the Suits under the Commercial Courts Act could only be filed before the High Court. After the notification of the Ordinance, the High Court also issued an Administrative Order dated 07th July, 2018, nominating all the District Judges/Additional District Judges of respective districts as Commercial Courts. With the establishment of Commercial Courts at District Court level thereafter, the Suits relating to Commercial Disputes could be filed before the District Courts as well.

22. Section 18 of the Commercial Courts Act also empowers the High Court to issue practice directions to supplement the provisions of

the Code insofar as such provisions apply to the hearing of commercial disputes of a Specified Value.

23. It must be remembered that apart from the limitation on the power of the Courts to condone the delay in filing of the Written Statement by the defendant, the amended provisions of the Code as applicable to Commercial Disputes under the Commercial Courts Act, stipulate compliance of various requirements from the Defendant at the time of filing of the Written Statement, like filing of Statement of Truth, etcetera. Therefore, the proforma summons as prescribed in the Practice Direction also serves the object of putting the defendant to notice that the amended provisions of the Code shall apply and must be adhered to.

24. Therefore, keeping in view the object of the Practice Direction, it is clarified that the proforma format of Summons prescribed by the Practice Direction dated 27.11.2015 is applicable even to the Commercial Courts at the District Courts. This clarification shall however be applicable only prospectively and would not result in reopening of cases where the summons was not sent in this prescribed format.

25. In the present case, the summons issued to the petitioner read as under:

<i>Date of Order</i>	<i>02.11.2019</i>	<i>Name of the Process Server</i>
<i>Date of Filing PF</i>	<i>24.09.2019</i>	
<i>Date of issue</i>	<i>22.11.2019</i>	
<i>No. of Documents annexed</i>	<i>COPY ATTACHED</i>	<i>No. of Process</i>

NEXT DATE OF HEARING	06.01.2020	Date of return
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**IN THE COURT OF SH VIKAS DHULL
ADDITIONAL DISTRICT & SESSIONS
JUDGE DELHI - (WEST) - 01. ROOM No.
215, 2nd FLOOR TIS HAZARI COURT
DELHI**

**SUMMONS FOR SETTLEMENT OF ISSUES
(Order V, Rule 1 and 5 of the Code of Civil
Procedures)**

CS NO- 448/19

SHUKLA SEHGAL PLAINTIFF

Vs.

MOTHER PRIDE EDUCATION

..... DEFENDANT

TO,

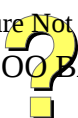
**MOTHER PRIDE EDUCATION
INSTITUTION PVT LTD**

**THROUGH MANAGING DIRECTOR/CEO
ANIL KUMAR GOEL**

A3/88, GF, JANAK PURI, NEW DELHI-58

Whereas **PLAINTIFF** has instituted a *Plaint* against you copy of the same is attached. You are hereby summoned to file a *Written statement* within 30 days of the service of the present summons and to appear in this court in person, or by a pleader duly instructed, and able to answer all material questions relating to suit, or who shall be accompanied by some person able to answer all such questions, on **06th JANUARY 2020 at 10'O'Clock in the fore noon** answer the claim; and further you are hereby directed to produce on the said day all documents in your possession or power upon which you base your defence or counter-claim, and where you rely on any other document whether in your possession or power or not, as evidence in support of your defence or claim for set-off or counter-claim you shall enter such documents in a list to be annexed to the written statement.

Take notice that, in default of your appearance on the day before mentioned, the



suit will be heard and determined in your absence.

Given under my hand and seal of the court on this 22nd DAY of NOVEMBER, 2019.”

26. The above Summons does not give any indication to the Defendant that this is a suit filed under the Commercial Courts Act. The number of the suit is also not reflective of the said Suit being a Commercial Suit.

27. The reliance of the respondent on the judgment of this Court in ***Rane Prakash and Ors*** (supra) is ill-founded inasmuch as in the said case, there was a clear indication to the defendant that the suit was filed under Order XXXVII of the Code. The defect was in the prescribed format of the summons and the Court held that as long as summons was in the prescribed format, the defendant could not take advantage of any defect therein as the defendant was made aware that the suit was filed under Order XXXVII of the Code. The same is not the case here inasmuch as in the summons issued by the learned Trial Court, there is no indication to the petitioner herein that the suit was filed under the Commercial Courts Act or that the provision of the Code as applicable to Suits relating to Commercial Disputes would be applicable.

28. The submission of the learned counsel for the respondent that the petitioner could otherwise have become aware of the suit being one filed under the Commercial Courts Act also cannot be accepted. The submission that a one-time process fee was filed is not something easily discernible from the summons so as to impute knowledge of the

suit being a Commercial Suit on the petitioner. Equally, the reliance on the paragraph 20 of the Complaint and the number of the suit in the complaint also cannot be used as a sufficient notice to the petitioner of the Suit being filed and entertained under the Commercial Courts Act, inasmuch as the summons itself does not give any indication that the suit is commercial in nature. The Commercial Suits are numbered as CS(Comm.) whereas the summons mentioned the suit number as CS No.448/2019. In paragraph 20 of the complaint the sentence claiming the Suit to be filed under the Commercial Courts Act is handwritten. It is also not uncommon that a suit filed as a Commercial Suit is not entertained as such by the Court and is instead treated as an Ordinary Suit. In such a case, the draft complaint that is sent along with the Summons may still use the category of CS(Comm.) and the paragraph describing it as a Commercial Suit may still have remained un-amended. Therefore, the above are not sufficient to attribute knowledge to the defendant/petitioner herein of the Suit being Commercial.

29. As far as the email sent to the petitioner enclosing the summons, merely because the subject to the email made a reference to the number of the suit as CS (Comm.), again may not be adequate to draw the attention of the petitioner to the rigours of special provisions of the Code to the suit.

30. It is reemphasized that apart from Order V Rule 1 and Order VIII Rule 1 restricting the power of the Court to condone the delay in filing of the Written Statement, there are other provisions of the Code at the stage of filing of the Written Statement, like verification, filing

of a Statement of Truth, filing of documents etcetera, which are applicable only to the Commercial Disputes. Therefore, it is essential that the defendant must be put to notice that the Suit is one where such rigours will be applicable. It cannot be left to the interpretation or presumption or deduction of the defendant in such vague manner.

31. The submission of the petitioner that it became aware of the suit being filed under the Commercial Courts Act only on 25.02.2020 when its written statement was taken off the record for not being accompanied with Statement of Truth and Affidavit of Admission/Denial of documents, therefore, deserves acceptance.

32. The question then is; what will be the effect of such belated knowledge of the Defendant of the Suit being one under the Commercial Courts Act as far limitation on the power of the Court to condone the delay in filing of the Written Statement by the Defendant as contained in Order V Rule 1 and Order VIII Rule 1 and 10 of the Code as applicable to the Commercial Disputes, is concerned.

33. To answer the above, let us first consider the provisions of Order V Rule 1(1) and Order VIII Rule 1 and 10 of the Code as applicable to Ordinary Suits and as applicable to Commercial Suits. The same are quoted herein below:-

ORDINARY SUITS:-

Order V Rule 1(1) of the Code

“1. Summons.—1 (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim

and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant :

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Order VIII Rule 1 of the Code

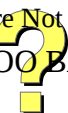
1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Order VIII Rule 10 of Code

10. Procedure when party fails to present written statement called for by Court.—Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

COMMERCIAL SUITS:-



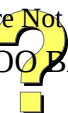
The Second Proviso to Order V Rule 1(1) as amended by the Commercial Courts Act, 2015

“Provided further 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.”

The Proviso to Order VIII Rule 1 as amended by the Commercial Courts Act, 2015

“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.”

Proviso to Order VIII Rule 10 as inserted by Commercial Courts Act, 2015

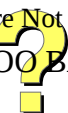


“Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

34. In ***Salem Advocate Bar Association, T.N. v. Union of India***, (2005) 6 SCC 344, the Supreme Court interpreted the above provisions of the Code as applicable to the Ordinary Suits, as under:-

“20. The use of the word “shall” in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word “shall” is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment



against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word “shall”, the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to “make such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1. In *Kailash v. Nanhku*, (2005) 4 SCC 480 wherein this was the only question before the Supreme Court and wherein a three-Judge Bench has come to exactly the same conclusion.”

35. In *SCG Contracts (India) Private Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.*, (2019) 12 SCC 210, the Supreme

Court highlighted the change brought about by the provisions of the Code as applicable to Commercial Disputes, in the following words:

“8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

xxxx

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

xxxx

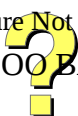
This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

xxxx

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

9. *xxxxxx*

10. *Several High Court judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. See Oku*



Tech (P) Ltd. v. Sangeet Agarwal [2016 SCC OnLine Del 6601] by a learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No. 3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court in Maja Cosmetics v. Oasis Commercial (P) Ltd [2018 SCC OnLine Del 6698].

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught."

36. Therefore, both in Ordinary Suits and in Commercial Suits, the defendant has to file the Written Statement within 30 days from the date of service of summons on him. In case of his failure to do so, the Court is empowered to allow the defendant to file the Written Statement on such other day as may be specified by the Court, but which shall not be later than ninety days (in case of Ordinary Suit) and one hundred and twenty days (in case of Commercial Suit) from the date of service of summons. The major difference lies thereafter. While in an Ordinary Suit, even after expiry of ninety days from the date of service of summons, the Court can allow the defendant to file the Written Statement, in Commercial Suits, the Court cannot allow the Written Statement filed beyond one hundred and twenty days to be taken on record.

37. In both Ordinary Suit and Commercial Suit, even while allowing the defendant to file the Written Statement beyond thirty days and within 90/120 days, the Court has to record reasons in writing for the same, and in case of Commercial Suit, impose such costs on the defendant as the Court may deem fit. The submission of the petitioner that the Court has no discretion but to extend the time for filing of the Written Statement, therefore, cannot be accepted. As held by the Supreme Court in *SCG Contracts (India) Private Ltd.(supra)*, period beyond 30 days of service of summons is the grace period which a court is empowered to grant to the defendant, for reasons to be recorded in writing, for filing of the written statement. Such grace period cannot be claimed as a matter of right by the defendant but is at the discretion of the court. The defendant cannot claim extension of period of time for filing of the Written Statement without giving any justified reason for the delay in filing.

38. Keeping in view the object and at the same time the rigours of the Commercial Courts Act, it is therefore, held that in a case where the defendant was not made aware that the Suit has been filed under the Commercial Courts Act and the Written Statement filed by such Defendant within the thirty days of service of summons was not taken on record because the same did not meet the requirements as stipulated in the Code as applicable to the Commercial Suits, the Court may deem the thirty-day period for filing of the Written Statement to commence from the date the defendant gains the knowledge of the Suit being filed under the Commercial Courts Act. However, where the Written Statement was sought to be filed beyond the thirty days'

period, the defendant cannot claim the wiping of the slate clean of such delay. The Defendant must first show the reasons why the Written Statement was not filed within the thirty-day period as prescribed as this had to be done even where the suit was an Ordinary Suit. If the Court finds the said explanation to be worthy of acceptance, the Court may extend the period of filing of the written statement by such period as it may deem fit or may even order that the thirty-day period shall commence from the date that the defendant actually gained knowledge of the Suit being one filed under the Commercial Courts Act. In this manner, while ensuring the object of the Commercial Courts Act, it shall also be ensured that the Defendant is not prejudiced because of lack of knowledge that the special provisions of the Code are applicable to the Suit in question.

39. The next issue to be determined in as to whether the petitioner was entitled to the benefit of order dated 23.03.2020 passed by the Supreme Court in *In Re: Cognizance for Extension of Limitation (Suo Moto Writ Petition (Civil) No. 3/2020)*. On facts there is no dispute that 120 days of service of summons on the petitioner would have expired on 10th April 2020, however, prior thereto lockdown was declared by the Central Government throughout India with effect from 25.03.2020. It is also to be noted that the functioning of the District Courts in Delhi had been restricted pursuant to the Advisory dated 16.03.2020, and completely suspended pursuant to the Office Order dated 23.03.2020 issued by the High Court. The Supreme Court also, taking into the account the outbreak of the pandemic, vide its order dated 23.03.2020, had extended the period of limitation prescribed

under the general law or Special Laws, whether condonable or not, with effect from 15th March 2020.

40. The Supreme Court vide its subsequent order dated 08.03.2021 passed in the above Writ Petition, has further directed that the period from 15.03.2020 till 14.03.2021 shall be excluded in computing the outer limit within which the Court can condone the delay. This period has been further extended by the Supreme Court vide its order dated 27.04.2021 passed in the above Writ Petition.

41. Though the learned Trial Court did not have the benefit of the above two orders of the Supreme Court, the same having been passed after passing of the Impugned Order of the learned Trial Court, the same would be applicable to the present petition and the finding of the learned Trial Court holding that the petitioner was not entitled to the benefit of the order dated 23.03.2020 passed by the Supreme Court, cannot be sustained.

42. Keeping the above principles in mind, I shall now consider the effect thereof on the present petition.

43. As noted above, the petitioner was to file its Written Statement on or before 12.01.2020. However, the first Written Statement was filed by the petitioner only on 25.02.2020, albeit without any application seeking extension of time to file the same. The said Written Statement was therefore, struck off the record. Herein it must be reiterated that even if this was an Ordinary Suit, the Written Statement filed by the petitioner was liable to be struck off the record as having been filed beyond the prescribed period of thirty days and

without giving any sufficient reason for such delay. Therefore, no infirmity can be found in this order.

44. As the petitioner did not file the Written Statement within the period of thirty days nor filed any application seeking extension of time for filing the same belatedly, in my opinion, the petitioner cannot claim that a fresh period of 30 days to file the Written Statement should commence from 25.02.2020. To hold otherwise would be to give an advantage to the defendant who files the Written Statement belatedly without any sufficient reason. At best, the petitioner, on his application, if it had so filed, could have been granted an extension of time to file the Written Statement in the proper format and alongwith the Statement of Truth.

45. The Written Statement has thereafter been filed by the petitioner only on 05.09.2020. From 25.02.2020 till 15.03.2020 there was a further delay of 19 days. Therefore, even excluding the period from 15.03.2020 till 05.09.2020, that is the period of the lockdown, the petitioner had to explain the reason for not filing the Written Statement within the thirty days of receipt of summons and for another 63 days thereafter. In the application seeking extension of time for filing the Written Statement filed by the petitioner on 05.09.2020, there is not even a reason leave alone sufficient reason given by the petitioner for this delay. The petitioner only claimed that the period of thirty days should commence from 25.02.2020 and that the period from 15.03.2020 is to be excluded. As held hereinabove, in the facts of the present case, the petitioner is not entitled to claim a fresh period of 30 days for filing the Written Statement from 25.02.2020 and even

excluding the period from 15.03.2020, there was a delay of 63 days in filing of the Written Statement for which no sufficient justification/reason was given by the petitioner in his application.

46. For the reasons above stated, the application of the petitioner seeking permission to place its Written Statement on record could not have been allowed by the learned Trial Court.

47. Therefore, although for different reasons, I do not find any infirmity in the Impugned Orders. The petition is accordingly dismissed. There shall be no order as to costs.

48. As I have clarified that the format of Summons as prescribed in the Practice Direction dated 27.11.2015 of this Court is also applicable to the District Courts, let a copy of this order be also placed before the learned Registrar General of this Court, who may, after obtaining orders from Hon'ble the Chief Justice in this regard, issue necessary directions to the District Court for ensuring compliance thereto.

NAVIN CHAWLA, J

MAY 11, 2021/Arya/G/A