

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 662 of 2022

***M/s. Vinayaka Condev Pvt. Ltd. and Petitioners
another***

**Mr. Manmaya Kumar Dash, Advocate
-versus-**

Debadatta Dash Opp. Party

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
28.07.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. The Petitioners in this CMP seeks to assail the order dated 15th July, 2022 passed by learned Senior Civil Judge (Commercial Court), Bhubaneswar in C.S.(M.S.) No. 161 of 2021, whereby he refused to accept the written statement filed by the Defendants-Petitioners holding it to be beyond the period of limitation.
3. Mr. Dash, learned counsel for the Petitioners submits that admittedly there is a delay of nine days in filing the written statement, but the circumstance for filing of the written statement beyond the period of limitation was out of control of the Defendants. It is his submission that on 18th April, 2022, they were required to file written statement. But, subsequently vide order dated 11th March, 2022, the Defendants were set *ex parte* and the order setting the Defendants-Petitioners *ex parte* was set aside vide order dated 7th May, 2022. However, on 20th June, 2022, due to accommodation sought for by the Bar

Members, no step was taken. On 22nd June, 2022, no step was also taken by the Defendants. Thereafter, the suit was posted to 8th July, 2022 on which date the written statement was filed with a petition to accept the same. It is his submission that the Defendants can only file written statement on the date of posting of the suit and they have just done that. Had the suit been posted earlier for filing of the written statement, he would have been in a position to file the same within the stipulated time. He further submits that although the time provided for filing of the written statement in a commercial suit is mandatory in nature, but in the facts and circumstances, the Court can exercise its jurisdiction to extend the period of filing of the written statement and to accept the same. He, therefore, prays for setting aside the impugned order and to direct learned Senior Civil Judge to accept the written statement filed by the Defendants on 8th July, 2022.

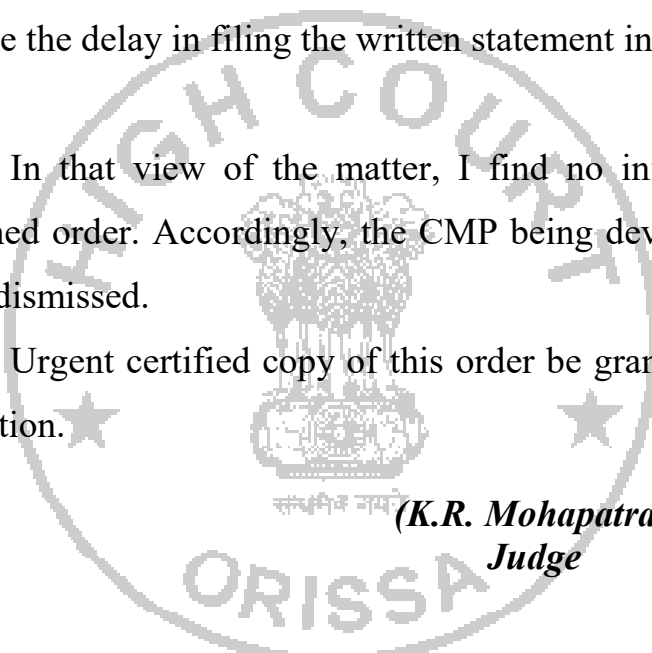
4. Upon hearing learned counsel for the Petitioners and on perusal of the record, it appears that the Defendants-Petitioners filed written statement only on 8th July, 2022. There is nothing on record to show that written statement was prepared earlier and due to posting of the case to 8th July, 2022, the same was filed belatedly. No petition to advance the date to file the written statement was also filed. Law is well settled that the Defendant in a commercial suit has to file a written statement within period of 120 days from the date of appearance. Excluding the period from 15th March, 2020 till 28th February, 2022 as per the decision of the Hon'ble Supreme Court, reported in (2022) 1 OLR (SC) 239, still there is a delay of nine days in

filing the written statement, which is also admitted by learned counsel for the Petitioners.

5. It is, however, submitted by Mr. Dash, learned counsel for the Petitioner that the cause list was not affixed on the notice board on 20th June, 2022 for which learned counsel for the Defendants-Petitioners could not know about the date. The said plea is not acceptable because the Defendants under law are obliged to file their written statement within a period 120 days from the date of their appearance. This Court has no power to condone the delay in filing the written statement in a commercial suit.

6. In that view of the matter, I find no infirmity in the impugned order. Accordingly, the CMP being devoid any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the words 'HIGH COURT' at the top and 'ORISSA' at the bottom. Two stars are positioned on either side of the central emblem. Below the lion capital, there is text in Odia script. The signature of the judge is written over the bottom part of the seal.
(K.R. Mohapatra)
Judge

bks