

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

**INTERIM APPLICATION NO. 3447 OF 2022
IN
COMMERCIAL SUIT NO. 600 OF 2018**

Amit Pradyuman Bhankaria ... Applicant/
Orig. Defendant No.1

In the matter of

Ashish Pradyuman Bhankaria & Ors. ... Plaintiffs

Versus

Amit Pradyuman Bhankaria & Ors. ... Defendants

**WITH
NOTICE OF MOTION NO.1084 OF 2018
IN
COMMERCIAL SUIT NO. 600 OF 2018**

Mr. Abhinav Chandrachud a/w Rochyeta Shah i/b Cyril Amarchand Mangaldas for the Applicant/Defendants.

Mr. Rohaan Cama, Mr. Shanay Shah a/w Mr. Shashwat Rai i/b Keystone Partners for the Plaintiffs.

CORAM : R.I. CHAGLA, J.

DATED : 14th OCTOBER, 2022.

ORDER :

1 Heard the learned Counsel for the parties. By the present

Interim Application, the Applicant is seeking condonation of delay in filing the written statement and for the written statement to be taken on record.

2 The writ of summons was admittedly served on the Applicant on 09.10.2021. The ensuing Covid pandemic had resulted in orders passed by the Supreme Court relaxing the period of limitation which are relied upon by Dr. Abhinav Chandrachud, the learned Counsel appearing for the Applicant. The first of these orders was on 23.03.2020 and the last order is dated 10.01.2022. By the last order of the Supreme Court the period of limitation was relaxed till 28.02.2022. Thus, the period of limitation had been excluded from 15.03.2020 to 28.02.2022. In the operative part of the said order at paragraph 5 III the Supreme Court has held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

3 The Applicant/Original Defendant No.1 states that as Writ of Summons was served on 09.10.2021 i.e. during the relaxation of the

period of limitation the Defendants were to file written statement within 30 days commencing from 01.03.2022 as directed by the Supreme Court and for which the first day would be excluded. The Applicant has further stated that the written statement could not be filed during that period in view of difficulties arising out of continuation of the Covid-19 pandemic though the written statement had been signed and notarized on 01.06.2022 and had been kept ready for filing. In view of the written statement being unable to be filed within the statutory period of 30 days as provided for under Order VIII Rule 1 of the Code of Civil Procedure, 1908 read with the said order dated 10.01.2022, the written statement could only be accepted as provided in Order VIII Rule 1 of the Code of Civil Procedure, 1908 if the Court for reasons to be recorded in writing, accepts the written statement provided it is not filed later than 120 days from the date of service of summons. In the present case this would be 120 days from 02.03.2022, by excluding the first date. The present Interim Application has been filed on 29.06.2022 and thus is being filed on the 120th day from 02.03.2022.

4 Dr. Abhinav Chandrachud, in support of the contentions for the Applicant/Original Defendant No.1 has placed reliance upon Order VIII Rule 1 of the Code of Civil Procedure, 1908 which provides for filing of written statement within 30 days from the date of service of summons

on the Defendant and the proviso thereto which provides for the additional period of 90 days over and above 30 days for filing of written statement as may be accepted by the Court upon recording of reasons in writing but shall not exceed the 120 days. Dr. Abhinav Chandrachud has relied on the last in the series of orders of the Supreme Court, viz. the said order dated 10.01.2022 which had relaxed the period of limitation till 28.02.2022 and had provided for the limitation period to commence from 01.03.2022. In the present case this would be 30 days for filing of written statement and thereafter 90 days as accepted by this Court. The period of limitation would be computed from 02.03.2022 by excluding the first day i.e. 01.03.2022. In view of the Interim Application having been filed on 29.06.2022, the written statement upon being accepted is filed on the 120th day of commencement of the period of limitation.

5 Dr. Abhinav Chandrachud has placed reliance upon the General Clauses Act and in particular Section 9 thereof which provides for commencement and termination of time. It provides that in any Central Act or Regulation made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days to use the word “from” and for the purpose of including the last in a series of days to use the word “to”. He has submitted that in the present case the Supreme Court in its order dated 10.01.2022 had in express

exercise of powers under Article 142 of the Constitution of India provided that limitation would commenced 'from' 01.03.2022. He has submitted that under Order VIII Rule 1 of the Code of Civil Procedure, the time provided for filing of the written statement is 30 days from service of writ of summons which would now be read commencing from 01.03.2022 and accordingly as the word 'from' is used in the said order under the General Clauses Act, the first day would be excluded.

6 Dr. Abhinav Chandrachud has further relied upon Section 12 (1) of Limitation Act which provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. He has submitted that from this provision it is clear that the application which has been filed on 29.06.2022, the period of limitation would commence from 01.03.2022 and by virtue of Section 12 (1) of the Limitation Act, the day from which the period is to be reckoned i.e. 01.03.2022, that day is to be excluded. He has submitted that accordingly the application for acceptance of written statement has been filed on the 120th day from 01.03.2022 by excluding the first day.

7 Dr. Abhinav Chandrachud has relied upon the decision of the Supreme Court in *Saketh India Limited vs. India Securities Limited*,

(1999) 3 SCC 1 at paras 7 & 8 which has referred to Section 12(1) of the Limitation Act r/w. Section 9 of the General Clauses Act and has expressly held that both these provisions in the two Acts specifically provide that in computing the period of limitation, the day from which the period is to be reckoned i.e. the first in the series of days, by the use of the word “from”, would necessary exclude the first day and the use of the word ‘to’ would include the last. Dr. Abhinav Chandrachud has also relied upon the decision of the Supreme Court in *Prakash Corporates vs. Dee Vee Projects Limited* (2022) 5 SCC 112 which has considered that the orders passed by the Supreme Court relaxing the period of limitation would apply to the filing of the written statement. Dr. Abhinav Chandrachud has accordingly submitted that in view of the Interim Application having been filed on the 120th day for acceptance of written statement, this Court should allow the Interim Application and take the written statement on file.

8 Mr. Cama, learned Counsel appearing for the Plaintiff has vehemently opposed the grant of relief sought for by the Applicant/Original Defendant No.1. He has submitted that the Supreme Court in the said order dated 10.01.2022 had made it clear that by its prior orders including this order, these would be relaxation of the period of limitation due to the Covid pandemic and that the period of limitation would now commence from 01.03.2021. Thus, it has been clear way back

from 10.01.2022 when the said order was passed that the limitation had been relaxed till 28.02.2022 and the period of limitation would commence from 01.03.2022. This cannot be construed as sought to be construed by Dr. Abhinav Chandrachud that the period of limitation would commence by excluding the first day i.e. 01.03.2022.

9 Mr. Cama has submitted that Order 9 Rule 1 of the General Clauses Act relied upon by Dr. Abhinav Chandrachud would have no application in the present case as the limitation which is now to commence on 01.03.2022 is by an order of the Court i.e. the Supreme Court and not by any Central Act or Regulation as contemplated in Section 9 of the General Clauses Act. He has further submitted that under Order VIII Rule 1 of the Code of Civil Procedure, the written statement is to be filed within 30 days from the date of service of summons on the Defendant. That period would have commenced from the issuance of summons on 09.10.2021, but in view of the Covid pandemic the period of limitation has been relaxed and would now commence from 01.03.2022 by the said order of the Supreme Court.

10 Mr. Cama has further submitted that Section 12 (1) of the Limitation Act also has no applicability in the present case. He has submitted that the provision applies only to a suit, appeal or application.

In the present case a written statement is sought to be filed. Further, he has submitted that for seeking acceptance of the written statement, provided it is not filed beyond 120 days which in the present case would be from 01.03.2022, an application may not be filed at all. He has submitted that it is often the practice of the Court to accept the written statement, provided it is filed within 120 days of either the writ of summons or in present case from 01.03.2022 by order of the Supreme Court, without requirement of filing of an application. That is the prerogative of the Court. He has submitted that the purpose for excluding the first day from the period to be reckoned for filing of the suit, appeal or application under Section 12 of the Limitation Act is that it would cause prejudice to the party filing the suit, appeal or application as the party may have received either the decree or order on the first day, thus not providing full period of limitation for filing the suit, appeal or application if the first day is included.

11 Mr Cama has further submitted that in the Supreme Court in *Saketh India Limited* (supra), was considering Section 9 of General Clauses Act and Section 12(1) of the Limitation Act and in that context has held in paragraph 8 that ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. He has submitted that it does not follow that in all cases this is the practice and

particularly where the commencement of limitation period has been laid down by the order of the Supreme Court.

12 Mr. Cama has accordingly submitted that from a reading of the Interim Application itself, the Applicant has construed the running of the period of limitation from 01.03.2022 and in view of the Interim Application having been filed on 29.06.2022, it is beyond the period of 120 days i.e. it has been filed on the 121st day of commencement from 01.03.2022 for acceptance of the filing of written statement. He has accordingly submitted that there is no merit in the application and accordingly it be rejected.

13 Having considered the submissions, it is clear that the Supreme Court had relaxed the period of limitation in view of the Covid pandemic and in that connection had from time to time passed orders and the order dated 10.01.2022 is the last of such orders. The Supreme Court had in the operative part of paragraph 5 of the said order made it clear that the period of limitation which would start from the date specified i.e. 01.03.2022. Further, in cases where limitation would have expired between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, the limitation period shall be of 90 days from 01.03.2022. In the event the actual balance period w.e.f. 01.03.2022

is greater than 90 days then the longer period shall apply. In the present case we are concerned with a case where the actual balance period of limitation is greater than 90 days and for which longer period shall apply from 01.03.2022. Thus, being an order of the Court, it would necessarily have to be construed to be operational from the period so specified by the Court. Section 9 of the General Clauses Act relied upon by Dr. Abhinav Chandrachud applies in case of a Central Act or Regulation and thus in my view would have no applicability to the present case where limitation has been extended by an order of the Court. Thus, the submission of Dr. Abhinav Chandrachud that the first in the series of days by the use of the word 'from' excludes the first day cannot be accepted.

14 Further, in my view Order VIII Rule 1 of the Code of Civil Procedure which provides for filing of written statement within 30 days from the date of service of summons on the Defendant and not beyond 120 days from the service of the summons as accepted by the Court for reasons to be recorded in writing, is required to be read with the said order dated 10.01.2022 passed by the Supreme Court. Though the Code of Civil Procedure is a Central Legislation, in what will apply for commencement of limitation in the present case is the order of the Supreme Court.

15 Further, Section 12(1) of the Code of Civil Procedure which has been relied upon by Dr. Chandrachud in support of his submission that the present Application considered by this Court falls within that provision and the first day from which the period of limitation is to be reckoned is to be excluded, is inapplicable in the present case. The court in the present case is considering the period of limitation for filing the written statement and not the Application. Further, the period of limitation for filing the written statement has been determined by the order of the Supreme Court. It is only upon failure to file the written statement within 30 days from 01.03.2022, that an Application is to be made for condonation of delay and for acceptance of written statement on record. I find merit in the submission of Mr. Cama that the first day which is to be excluded as provided under Section 12 (1) of the Limitation Act is inapplicable in the present case and only applies to a suit, appeal or application and for providing a full period of limitation by virtue of any order or decree or judgment having been served on the party on the first day. Thus, in my view the decision of the Supreme Court in *Saketh India Limited* (supra) which has considered the aforementioned provisions of the General Clauses Act and Limitation Act, is inapplicable in the present case by virtue of period of limitation having been determined by the Court albeit in exercise of powers of the Supreme Court under

Article 142 of the Constitution of India.

16 Accordingly, in my view though the said orders of the Supreme Court relied upon by Dr. Abhinav Chandrachud, including last order dated 10.01.2022, has relaxed the period of limitation which would include for filing of written statement as held by the Supreme Court in *Prakash Corporates* (supra), the limitation period would necessarily commence from 01.03.2022 and the first day cannot be excluded. The parties have also been aware since 10.01.2022 when the said order was passed that limitation would commence from 01.03.2022.

17 In that view of the matter the relief sought for in the Interim Application is not granted. There shall be no order as to costs.

(R.I. CHAGLA, J.)

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by WAISHALI
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