



\$~69 (Appellate Side)

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

+ CM(M) 711/2022 & CM APPL. 32193/2022

HEMANT VERMA

..... Petitioner

Through: Mr. Jayant K. Mehta, Sr.
Advocate with Mr. Ravi Kapoor and Mr.
Rishav Ambastha, Advs.

versus

M/S DAINA TECHNO
SOLUTIONS PVT. LTD.

..... Respondent

Through: Mr. Jai Sahai Endlaw and Mr.
Ashish Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGEMENT (ORAL)

02.08.2022

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1. This petition under Article 227 of the Constitution of India assails the order dated 8th June 2020 passed by the learned District Judge (Commercial Courts) (“the learned Commercial Court”) in CS (Comm) 295/2020 (*Diana Techno Solutions Pvt Ltd v. Hemant Verma*), whereby the learned Commercial Court has dismissed the application of the petitioner, as the defendant in the suit, preferred under Order VIII Rule 1¹ of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015, for enlargement of

¹ 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 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.



time for filing written statement.

2. The issue in controversy being limited, a brief recapitulation of facts would suffice.

3. CS (Comm) 295/2020 was instituted by the respondent against the petitioner for recovery of an amount of ₹ 98,18,100/- along with *pendente lite* and future interest and costs. Summons were issued in the said suit by the learned Commercial Court on 16th December 2020. According to the petitioner, the paper book received by the petitioner along with the summons was incomplete and a complete paper book was received only on 24th January 2021. It is not necessary for this Court to enter into the said issue as, even reckoned from 21st January 2021, the maximum period of 120 days, within which the petitioner could have filed written statement (including the condonable period under Order VIII Rule 1 of the CPC) expired on 22nd May 2022.

4. Written statement came to be filed by the petitioner only on 21st August 2021. The petitioner accompanied the written statement with an application under Order VIII Rule 1 of the CPC, as amended by the Commercial Courts Act, 2015 to take the written statement on record.

5. The impugned order, dated 8th June 2022, passed by the learned Commercial Court rejects the petitioner's application under Order VIII Rule 1 of the CPC and, in the process, refuses to take the written statement filed by the petitioner on record.



6. Aggrieved thereby, the petitioner has invoked the jurisdiction vested in this Court by Article 227 of the Constitution of India.

7. I have heard Mr. Jayant Mehta, learned Senior Counsel for the petitioner and Mr. Jai Sahai Endlaw, learned Counsel for the respondent at considerable length.

8. The petitioner had cited before the Commercial Court the judgment of the Supreme Court in ***Prakash Corporates v. Dee Vee Projects Ltd***², in support of his contention that the written statement deserved to be taken on record. The precise case of the petitioner, predicated on ***Prakash Corporates***², was that, as all periods of limitation for filing the pleadings and proceedings stood extended, during the currency of the COVID-19 pandemic, by the orders passed by the Supreme Court in ***Re: Cognizance for Extension of Limitation***³ in, which has been extended from time to time, the latest extension having been reported in ***(2022) 3 SCC 117***, pleadings filed before the *terminus ad quem* fixed by the Supreme Court in its order cannot be treated as having been filed beyond time.

9. The respondent, *per contra*, relied on the judgment of a coordinate Single Bench of this Court in ***HT Media Ltd v. Brainlink International, Inc.***⁴, the Special Leave Petition preferred against which stands dismissed by the Supreme Court⁵.

² (2022) 5 SCC 112

³ Suo Motu WP (C) 3/2020

⁴ 2021 SCC OnLine Del 5398



10. Predictably, Mr. Mehta, learned Senior Counsel for the petitioner, has pressed into service *Prakash Corporates*² and Mr. Endlaw, learned Counsel for the respondent, has, *per contra*, pressed into service *HT Media Ltd.*⁴.

11. To my mind, the issue in controversy stands concluded by *Prakash Corporates*², and the decision of this Court in *HT Media Ltd.*⁴, despite the dismissal of the SLP preferred thereagainst, cannot militate against the position in law as authoritatively enunciated in *Prakash Corporates*².

12. *Prakash Corporates*²

12.1 In *Prakash Corporates*², the challenge before the Supreme Court, at the instance of the appellant Prakash Corporates (hereinafter “Prakash”) was against an order dated 9th July 2021 passed by the High Court of Chhattisgarh, upholding order dated 22nd June 2021 passed by the learned Commercial Court, Nava Raipur, declining the prayer of Prakash (as the defendant in the suit before the learned Commercial Court) for extension of time to file written statement. As in the present case, the learned Commercial Court had, in the said decision, held that, 120 days from the date of service of summons on Prakash having expired, no further time could be granted to Prakash to file the written statement.

12.2 Again, as in the present case, Prakash pressed into service, at all

⁵ Brainlink International, Inc. v. H.T.Media Ltd, MANU/SCOR/19145/2022



levels and before all fora, the order passed by the Supreme Court in *Re: Cognizance for Extension of Limitation*³, pointing out that the time for filing written statement had expired after 15th March 2020, which was the *terminus a quo* from which the amnesty extended by the Supreme Court from operation of limitation commenced, and that, therefore, by operation of the orders passed by the Supreme Court in *Re: Cognizance for Extension of Limitation*³, the written statement filed by it could not be declined to be taken on record.

12.3 The Supreme Court noted, in para 4.8 of the report, that the second proviso to Order V Rule 1(1)⁶ read with the proviso Order VIII Rule 1¹ of the CPC, as amended by the Commercial Courts Act, 2015 would require Prakash to have filed its written statement within 30 days of receipt of summons, with a maximum condonable period which would end on the expiry of 120 days from the date of service of summons. The said period of 120 days, noted the Supreme Court, admittedly expired on 6th May 2021, by which time Prakash had yet not filed its written statement.

12.4 Even after 6th May 2021, the Supreme Court observed that,

⁶ 1. **Summons –**

(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 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.



instead of filing the written statement, further adjournment was sought by Prakash. It was in these circumstances that, on 22nd June 2021, the right of Prakash to file written statement was closed by the learned Commercial Court.

12.5 The High Court, in upholding the decision of the learned Commercial Court, relied on the judgements of the Supreme Court in *SCG Contracts (India) (P) Ltd v K.S. Chamankar Infrastructure (P) Ltd*⁷ and *Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd*⁸.

12.6 The Supreme Court, in the circumstances, identified the issue arising for consideration before it (in para 14 of the report) as “whether the opportunity of filing written statement in the subject suit has rightly been declined or the appellant could be extended further relaxation in view of the orders passed and issued in the wake of COVID-19 pandemic”.

12.7 Adverting to the position that emerged from a conjoint reading of Order V Rule 1, Order VIII Rule 1¹ and Order VIII Rule 10⁹ of the CPC, as amended by the Commercial Courts Act, the Supreme Court, in para 19 of the report, observed thus:

⁷ (2019) 12 SCC 210

⁸ (2021) 2 SCC 317

⁹ **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.

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.



“Tersely put, as per the mandate of the said provisions: (a) the defendant is under an obligation to file the written statement of his defence within 30 days of service of summons; (b) if he fails to file the written statement within the said period of 30 days, he may be allowed to file the written statement on such other day as the Court may specify for reasons to be recorded in writing and on payment of such costs as the Court may impose but this other day, in any case, cannot go beyond 120 days from the date of service of summons; (c) on expiry of 120th day from the date of service of summons, the defendant forfeits the right to file the written statement and no Court can make an order to extend such time beyond 120 days from the date of service of summons.”

The position that would emerge, were these provisions to be literally applied, was thus adumbrated in para 23 of the report:

“If the aforesaid provisions and explained principles are literally and plainly applied to the facts of the present case, the 120th day from the date of service of summons came to an end with 06.05.2021 and the defendant, who had earlier been granted time for filing its written statement on payment of costs, forfeited such right with the end of 120th day, i.e., 06.05.2021. However, it is required to be kept in view that the provisions aforesaid and their interpretation in SCG Contracts (supra) operate in normal and non-extraordinary circumstances with the usual functioning of Courts. It is also noteworthy that the above referred provisions of CPC are not the only provisions of law which lay down mandatory timelines for particular proceedings. The relevant principles, in their normal and ordinary operation, are that such statutory timelines are of mandatory character with little, or rather no, discretion with the Adjudicating Authority for enlargement.”

12.8 Having thus identified the position which emerged from the statute, as literally read, the Supreme Court once again identified the issue that arose for consideration before it as “whether the said provisions and principles are required to be applied irrespective of the operation and effect of other orders passed/issued by the Courts under



the force of aberrant, abnormal and extraordinary circumstances”.

12.9 The Supreme Court held that the answer to this query necessarily could not be in the affirmative.

12.10 The reasoning for this decision of the Supreme Court is to be found in paras 27.7, 28, 28.1, 28.2, 28.3 and 28.4 of the report, which read thus:

“27.7 We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions.

28. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23.03.2020, this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15.03.2020 but, while concluding the matter on 23.09.2021, this Court specifically provided for exclusion of the period from 15.03.2020 till 02.10.2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. *When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months’*



notice for a suit against the Government). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.

28.1. Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23.09.2021 is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

28.2 In other words, the orders passed by this Court on 23.03.2020, 06.05.2020, 10.07.2020, 27.04.2021 and 23.09.2021 in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15.03.2020 to 02.10.2021) could still be filed within 90 days from 03.10.2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.

28.3 Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, *we have no hesitation in holding that the time limit for filing the written statement by the appellant in the subject suit did not come to an end on 06.05.2021.*”

(Emphasis supplied)

12.11 Adverting to the decisions cited before it, the Supreme Court noted that *SCG Contracts*⁷ pertained to a pre-COVID period and was,



therefore, of no relevance.

12.12 Apropos the decision in *Sagufa Ahmed*⁸, the Supreme Court held thus:

“33. So far as the decision of this Court in *Sagufa Ahmed*⁸ (*supra*) is concerned, a few relevant factors related with the said case need to be noticed. In that case, the appellants had moved an application before Guwahati Bench of the National Company Law Tribunal for winding up of the respondent company. The petition was dismissed on 25.10.2019. The appellants applied for a certified copy of the order dated 25.10.2019 only on 21 or 22.11.2019 and received the certified copy of the order through their counsel on 19.12.2019. However, the appellants filed the statutory appeal before the National Company Law Appellate Tribunal only on 20.07.2020 with an application for condonation of delay. The Appellate Tribunal dismissed the application for condonation of delay on the ground that it had no power to condone the delay beyond a period of 45 days. Consequently, the appeal was also dismissed. In that case, it was indisputable that even while counting from 19.12.2019, the period of 45 days expired on 02.02.2020 and another period of 45 days, for which the Appellate Tribunal could have condoned the delay, also expired on 18.03.2020. To overcome this difficulty, the appellants relied upon the aforesaid order dated 23.03.2020.

33.1 This Court observed that the appellants were not entitled to take refuge under the above order in SMWP No. 3 of 2020 because what was extended was only the period of limitation and not the period up to which delay could be condoned in exercise of discretion conferred by the statute. This Court said thus: -

“17. What was extended by the above order of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating



proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *vigilantibus et non dormientibus jura subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

33.2 One of the significant facts to be noticed is that the said decision in ***Sagufa Ahmed case*** was rendered by a 3-Judge Bench of this Court much before the aforesaid final orders dated 08.03.2021 and 27.09.2021 in SMWP No. 3 of 2020 by another 3-Judge Bench of this Court. In those final orders, this Court not only provided for the extension of period of limitation but also made it clear that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 to 02.10.2021 shall stand excluded. Such proposition of exclusion, which occurred in the later orders, was not before this Court in the case of ***Sagufa Ahmed (supra)***, which was decided much earlier i.e., on 18.09.2020.

33.3 Moreover, the extendable period in the case of ***Sagufa Ahmed (supra)*** was up to 18.03.2020; and this Court found that lockdown was imposed only on 24.03.2020 and there was no impediment in filing the appeal on or before 18.03.2020. The present one is a case where the prescribed extendable time for filing of the written statement expired on 06.05.2021. It is not the case of the respondent nor there is any observation in the orders impugned that at the relevant point of time, the area in question was not a containment zone or that such a normalcy was available where the appellant could have filed its written statement.

33.4 Having regard to the orders subsequently passed by the 3-Judge Bench of this Court in SMWP No. 3 of 2020 (and MA No. 665 of 2021 therein), as also having regard to the fundamental difference of facts and the surrounding factors, the said decision in ***Sagufa Ahmed***, in our view, is also of no application to the present case.

34. On behalf of the respondent, much emphasis has been laid on the submission that the appellant was regularly appearing in the Court and, therefore, cannot take advantage



of the orders passed in SMWP No. 3 of 2020. It is true that the appellant had indeed caused appearance in the Court in response to the summons and sought time for filing its written statement but at the same time, it is also undeniable that at the relevant point of time, the second wave of pandemic was simmering and then, it engulfed the country with rather unexpected intensity and ferocity. Then, on 27.04.2021, this Court restored the operation of the order dated 23.03.2020 in SMWP No. 3 of 2020. Putting all these factors together, we are unable to accept the submissions made on behalf of the respondent that because of earlier appearance or prayer for adjournment, the defendant-appellant would not be entitled to the relaxation available under the extraordinary orders passed by this Court. Implication and effect of the administrative order issued by the High Court.”

12.13 The law as enunciated by the Supreme Court in afore-extracted passages from *Prakash Corporates*² is clear and unmistakable. The Supreme Court has held that the effect of the operation of the orders passed by it, from time to time, in *Re: Cognizance for Extension of Limitation*³ was to extend the *terminus ad quem* for filing of pleadings, proceedings etc. in Courts and other such fora. In other words, to use the exact words implied by the Supreme Court “the excluded period, as a necessary consequence, *results in enlargement of time, over and above the period prescribed.*” As the Supreme Court has observed from the italicized words from para 28 of the report in *Prakash Corporates*², where the time thus stood enlarged, the issue of indolence, or otherwise, on the part of the litigant, lost significance, as the pleading or proceeding, if filed before the expiry of the time thus enlarged, was not barred by limitation.

12.14 Clearly, therefore, so long as the pleading or proceeding in question – in the present case, the written statement – was filed before



the terminal date fixed by the Supreme Court, no delay could be attributed to the litigant concerned. The pleading had, therefore, necessarily to have been regarded as having been filed within time.

12.15 The same position, I may note, emerges from the unmistakable words, implied in para 5(i) of the most recent order passed by the Supreme Court on 10th January 2022 in ***Re: Cognizance for Extension of Limitation***³, directing “that the period from 15.03.2020 till 28.02.2022 *shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings*”. Once the period from 15th March 2020 till 28th February 2022 thus stood excluded, expressly, by the Supreme Court, for all judicial or quasi judicial proceedings, there would be no question of any delay being attributed to a party who filed the proceeding in question during the said period.

13. *HT Media*⁴:

13.1 Adverting, now, to ***HT Media Ltd***⁴, Mr. Endlaw has pressed, into service, the similarity in facts between the said case and the present case.

13.2 The learned ADJ has, in the present case, emphasized the allegedly recalcitrant attitude of the petitioner as the ground for refusing to entertain the petitioner’s application under Order VIII Rule 1 of the CPC. In ***HT Media Ltd***⁴, too, the coordinate Bench of this Court had refrained from extending, to the respondent in that case, the



benefit of the order passed by the Supreme Court in *Re: Cognizance for Extension of Limitation*³, on the basis of the conduct of the respondent.

13.3 The order passed by the Supreme Court in the SLP, preferred against the judgement of this Court, on 14th March 2022, read thus:

“In the facts and circumstances of the case and keeping in mind the conduct on the part of the petitioners and when even during the pandemic the petitioners participated in the proceedings, which has been reflected in para 3 of the impugned order, we are in complete agreement with the view taken by the High Court.

No interference of this Court is called for in exercise of powers under Article 136 of the Constitution of India. The Special Leave Petition stands dismissed.”

(Emphasis supplied)

14. It cannot be said, in my respectful opinion, that the order passed by the Supreme Court could be accorded preference or precedence over the enunciation of the law in *Prakash Corporates*². The Supreme Court, in its order dated 14th March 2022, which is in the nature of a dismissal of the SLP without granting leave, has refused to interfere with the order passed by the High Court keeping in mind the conduct of the petitioner and the facts and circumstances of the case. With greatest respect, it cannot be said that the order dated 14th March 2022 amounts to a declaration of the law in a manner different from that declared by the Supreme Court in *Prakash Corporates*².

15. Despite the purported similarities between the facts in *HT*



*Media*² and the present case, therefore, I am unable to sustain the decision of the learned ADJ, allowing the petitioner's application under Order VIII Rule 1¹ of the CPC. *Prakash Corporates*² unequivocally holds that the time for filing pleadings and proceedings *stood enlarged till the terminal date fixed by the Supreme Court*. Pleadings and proceedings filed prior thereto could not, therefore, be regarded as belated. Any other view would result in complete disregard of the enunciation of the law in *Prakash Corporates*² and would, therefore, be an affront to both Article 141 and Article 144 of the Constitution of India.

16. I have also cogitated on whether the order passed by the Supreme Court in the SLP preferred against the judgement of this Court in *HT Media*⁴ could be regarded as crafting out an exception to the enunciation of the law in *Prakash Corporates*².

17. It cannot, in my view, for three reasons.

18. Firstly, and most obviously, the order of the Supreme Court does not say so, and it is not for this Court, hierarchically below the Supreme Court, to venture any such assumption.

19. Secondly, the Supreme Court has, in *Prakash Corporates*², specifically held that “when a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one *not referable to any indolence on the part of the litigant*, but being relatable to either the force of



circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government)”).

20. Thirdly, the decision in *Prakash Corporates*² is clearly declaratory of the law, within the meaning of Article 141 of the Constitution of India, and applies, therefore, *in rem*. As against this, the order passed by the Supreme Court in the SLP from *H.T. Media*⁴ is clearly *in personam*, as is apparent from the words of the order itself.

21. It is but axiomatic that, once the period of limitation for filing pleadings and proceedings stood extended by operation of the order passed by the Supreme Court, no indolence, in law, could be attributed to the litigant – howsoever recalcitrant his attitude may otherwise appear – who institutes the proceeding, or pleading, before the expiry of the period of limitation so extended.

22. I may note, in passing, that, insofar as *Prakash Corporates*² is concerned, the learned ADJ has referred only to paras 49 and 71 of the decision, and has apparently not appreciated the entire decision or the enunciation of the law passed therein. Apparently, therefore, the learned ADJ has also erred in the manner in which he has applied, to the facts before him, the decision of the Supreme Court in *Prakash Corporates*².

23. The matter, therefore, according to me, stands covered in favour of the petitioner by *Prakash Corporates*².

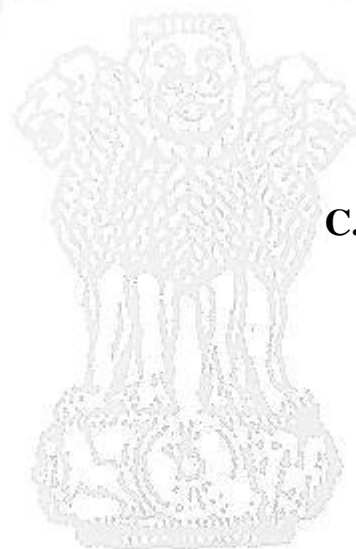


24. Following the said decision, therefore, the impugned order dated 8th June 2022, passed by the learned Commercial Court is quashed and set aside. The application of the petitioner under Order VIII Rule 1 of the CPC is accordingly allowed. The written statement and counter-claim filed by the petitioner are taken on record.

25. The petition stands allowed accordingly with no orders as to costs. Miscellaneous application is also disposed of.

AUGUST 2, 2022
r.bararia

C. HARI SHANKAR, J



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