

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 187 OF 2023

Mr. Jimmy Pankajkumar Desai ... Petitioner
Versus
1. Mr. Nadeem Nizamuddin Khan & Ors. ... Respondents

Mr. Jitendra P. Supekar, Advocate with Mr. Roger D'Souza, Advocate for the Petitioner.

Mr. Abhijit Gosavi, Advocate with Mr. Amay Phadte and Mr. Austin D'Souza, Advocates for the Respondents.

CORAM: M. S. KARNIK, J
DATED: 30th JUNE 2023

ORDER

1. The petitioner-original plaintiff, challenges the impugned order passed by the trial Court allowing the application for condonation of delay in filing written statement by defendant nos. 2 and 3 at exhibit D-21.

2. The petitioner is the original plaintiff. The plaintiff filed suit for specific relief against the respondents-original defendants before the Civil Judge Junior Division at Mapusa. The trial Court issued summons to the defendants on 05.08.2021. On 07.08.2021, defendant nos. 2 and 3 upon service of summons, put in their appearance. Defendant nos. 2 and 3 filed application under order VII Rule 11(a) (b) and (d) of Civil Procedure Code, 1908 (CPC) for rejection of plaint. The trial Court allowed the application and

returned the plaint to be presented before appropriate court. On 09.08.2021, upon return of the plaint, the plaintiff instituted commercial suit before the commercial court at Mapusa. The commercial court issued summons to the defendants on 11.08.2021. The defendant nos. 2 and 3 were served with the summons on 16.08.2021. The defendant nos. 2 and 3 filed an application under Order VII Rule 11 of CPC on 06.09.2021. The Commercial Court dismissed the application under Order VII Rule 11 of CPC filed by defendant nos. 2 and 3 on 08.04.2022. On 14.10.2022, the defendant nos. 2 and 3 filed application for condonation of delay of 69 days in filing written statement along with the written statement. The plaintiff filed their reply opposing the application on 24.11.2022. By the impugned order dated 22.12.2022, the Commercial Court condoned the delay of 69 days in filing the written statement with cost of Rs.5000/- to be paid to the plaintiff as condition precedent.

3. Learned counsel for the petitioner urged that the commercial court has no power to extend time beyond 120 days and allow the defendants to file written statement under Order VIII Rule 1 read with Order VIII Rule 10 of CPC as the provision stands amended by virtue of section 16 of the Commercial Courts, and Commercial Division and Commercial Appellate Division of High Court Act, 2015, (herein after referred to as the 'Commercial Court Act'), for short. Learned counsel urged that the order passed by the trial Court is in

the teeth of the law laid down by the Hon'ble Supreme Court in the matter of **SCG Contracts (India) Pvt. Ltd., vs. K. S. Chamankar Infrastructure Pvt. Limited & Ors.**¹.

4. On the other hand, learned counsel Shri Gosavi for the defendant nos. 2 and 3, supported the order passed by the Commercial Court. It is submitted that the written statement was affirmed on 08.04.2022, however, due to inadvertence on the part of the Advocate, the same remained to be filed in the court and, as such, the party should not be made to suffer for inadvertence on the part of his Advocate. It is submitted that this was a reason based on which the commercial court allowed the application for condonation of delay. It is therefore urged that no interference in the impugned order is warranted. It is further submitted that the scheme of Commercial Court's Act, as indicated by section 8, envisages that no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court. Learned Counsel therefore urged this Court not to entertain the present petition in view of the mandate of section 8 of the Commercial Court's Act. Learned counsel also relied upon the decision of this court in the case of **Vaijanath Dayanand Kale & Ors. vs. Nerkar Properties LLP & Ors.**², in support of his submission that the power envisaged

¹ (2019) 12 SCC 210

² 2021 (3) Mh.L.J. 202

by section 8 of the Commercial Court's Act would apply to the entertainment to the present writ petition as well. Learned counsel also relied on the decision of this Court in the case of **Mira Gehani vs. Axis Bank Ltd.**³ Learned counsel for the respondent relied upon the decision of the Supreme Court in the case of **Prakash Corporates vs. Dee Vee Projects Limited**⁴, to submit that in any case the defendant nos. 2 and 3 are entitled to the extension of limitation period for all proceedings before Courts and Tribunals due to Covid-19 pandemic as directed by the Supreme Court by excluding the period from 15.03.2020 to 02.10.2021, (It is common ground that this period was extended till 28.02.2022).

5. Heard learned counsel. The Commercial Court allowed the application on the following reasoning :

“8. Reverting to the case in hand, the written statement was sworn and affirmed on 08.04.2022 that due to inadvertence on the part of the Advocate, the same remained to be filed before the Court. That being so, the party should not be made to suffer for the inadvertent fault of his Advocate. Hence, the written statement is bound to be taken on record. The plaintiff can be compensated.”

³ 2019 SCC OnLine Bom. 358

⁴ (2022) 5 SCC 112

6. The Hon'ble Supreme Court in paragraph 11 of **SCG Contracts (India) Pvt. Ltd.** (supra), considered the provision in the context that it provided for a 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, therefore observing that all this point to the fact that earlier law on the filing of written statement under Order 8 Rule 1 has now been set at naught.

7. It cannot be lost sight of the fact that the Supreme Court in **Prakash Corporates** (supra) has extensively considered the operation and effect of the orders passed by the Supreme Court in SMWP No. 3 of 2020 pursuant to the outbreak of Covid-19 pandemic which practically engulfed the entire globe. The Supreme Court in paragraph 27.7 observed that the directions issued by the Supreme Court read as a whole would make it clear that the anxiety of the Apex Court was to obviate the hardships likely to be suffered by the litigants during the onslaught of this pandemic. Their Lordships therefore observed that the legal effect and the coverage of the orders passed by the Supreme 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. The Supreme Court has then considered the

consequences of exclusion of particular period in relation to any suit or proceeding.

8. In all fairness to the trial Court, it appears that the decision of **Prakash Corporates** (supra) was not placed for its consideration nor submissions advanced on the exclusion of the period of limitation as provided for by the Supreme Court during the Covid-19 pandemic period. In my opinion, in the interest of justice, the application for condonation of delay needs to be heard afresh and considered in the light of the decision in **Prakash Corporates** (supra) as well.

9. The impugned order is therefore set aside. The application is remitted to the Commercial Court for fresh hearing on merits and in accordance with law. The Commercial court to decide the application uninfluenced by the observations made in the impugned order.

10. Parties to appear before the trial court on the scheduled date of hearing along with copy of this order.

11. Petition is allowed in the above terms. No costs.

M. S. KARNIK, J