

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1615 OF 2020

Kalpana Bhagwant Shinde

...Petitioner

Versus

Sheeba Kuries Ltd.

...Respondent

...

Mr. Ravindra S. Pachundkar, for the Petitioner.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 4th May 2023.

P.C.:

1 By this Petition Petitioner assails order dated 10th January 2020 passed by District Judge-2, Pune thereby rejecting Petitioner's application for setting aside order dated 15th December 2017 declining to recall 'no written statement' order.

2 Petitioner is the Defendant in Special Civil Suit No.50 of 2017 which is registered before the District Judge, Pune as a Commercial Suit. Petitioner received summons in the suit on 28th July 2017. On account of Petitioner's failure to file Written Statement in time, order dated 15th

December 2017 was passed directing the suit to proceed without Written Statement of Petitioner/Defendant. Petitioner filed application at Exhibit-9 on 21st February 2019 seeking leave to file Written Statement. She pleaded that on account of her husband undergoing heart surgery, Written Statement could not be filed within stipulated time. The District Judge proceeded to reject Petitioner's Application at Exhibit-9 by order dated 10th January 2020 holding that the Commercial Court does not have discretion to extend the time for filing Written Statement beyond 120 days.

3 The learned Counsel appearing for Petitioner would take me through the application dated 21st February 2019 as well as various documents in support of the medical treatment of Petitioner's husband. He would submit that the provisions of Order 8, Rule 1 of the Code of Civil Procedure are discretionary and not mandatory. He would submit that the District Court ought to have extended the time for filing of the Written Statement. That in absence of Written Statement the suit of Plaintiff would be decreed without any defence on the part of Defendant. He would rely upon the judgments of the Apex Court in *Salem Advocate*

***Bar Association T.N. vs. Union of India*, (2005) 6 SCC 344, Raj Process Equipments and Systems Pvt. Ltd. and Others vs. Honest Derivatives Pvt. Ltd. 2022 SCC OnLine SC 1877 and Shaikh Salim Haji Abdul Khayumsab vs. Kumar and Others (2006) 1 SCC 46.**

4 I have considered the submissions canvassed by the learned Counsel for Petitioner. The suit filed by Plaintiff against the Petitioner/Defendant is a Commercial Suit. The Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 came into effect on 23rd October 2015, by which certain amendments were effected in the Code of Civil Procedure. In Order 5, Rule 1, sub-rule (1), for the second Proviso, following Proviso has been inserted:

“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 days, 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 and 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.”

5 Additionally, in Order 8, Rule 1, a new Proviso has been substituted as under:

“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 and twenty days from the date of service of summons and on expiry of one hundred and 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.”

6 Under Order 8, Rule 10 another proviso is inserted as under:

“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 pronouncement of such judgment a decree shall be drawn up.

7 Thus, in respect of suits filed before the Commercial Court, the Court does not have power to extend time beyond period of 120 days as per proviso under Order 8, Rule 10 of the Code of Civil Procedure. The law relating to permissibility of extension of time limit for filing Written Statement in Commercial Suits has been reiterated by the Apex Court in various decisions. Reference in this regard can be made to the decision of the Apex Court in *SCG Contracts (India) Private Limited vs. K.S.*

Chamankar Infrastructure Private Limited and others, (2019) 12 SCC 210.

“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 Private Limited vs. Sangeet Agarwal & Ors.* by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other judgments including a judgment of the Delhi High Court in *Maja Cosmetics vs. Oasis Commercial Pvt. 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.”

8 The reliance of the learned Counsel for Petitioner on judgment in ***Salem Advocate Bar Association T.N.*** (supra) would be of no avail as the judgment relates to unamended sections of the Code and it does not deal with the issue of permissibility of extension of time for filing of Written Statement in Commercial Suits. In ***Raj Process Equipments and Systems Pvt. Ltd.*** (supra) the suit was originally filed as a normal suit but was

subsequently transferred to Commercial Court. In that case, the 'No Written Statement' order was passed when the suit was pending before a normal Civil Court and the same was thereafter transferred before the Commercial Court. The facts in **Raj Process Equipments and Systems Pvt. Ltd. and Others** (supra) are thus entirely distinguishable.

9 **Shaikh Salim Haji Abdul Khayumsab** (supra) also deal with pre-amended provisions of the Code and in respect of suit filed before the normal Civil Court. Therefore, the judgment would have no application to the facts and circumstances of the present case.

10 Resultantly, I find the order passed by the District Court rejecting application for extension of time to file Written Statement to be unexceptionable. The Writ Petition is devoid of merits. It is dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)

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