



A.No.5710 of 2022 in
C.S(Comm.Div).No.63 of 2021

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C.SARAVANAN, J.

This application has been filed by the applicant/defendant seeking to set aside the ex-parte order dated 01.11.2022. The Court records indicates that the summons was served on the defendant on 05.10.2021.

2. If the provisions of the CPC as amended for the purpose of Commercial Courts Act, 2015 is applied, the limitation for filing the written statement would have expired on 120 days i.e, 03.02.2022. The applicant/defendant failed to file the written statement within the prescribed time under the aforesaid provisions.

3. It is submitted that the amended provisions of CPC will not apply to proceedings which are governed by Original SideRules of High Court framed under Section 129 of CPC. It is therefore that the ratio of the Hon'ble Supreme Court in the case of **M/s. SCG Contracts India Pvt Ltd**



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Vs. Ks Chamankar Infrastructure Pvt Ltd reported in 2019 (12) SCC 210, regarding the time-lines prescribed for filing written statement will not apply.

4. The learned counsel for the respondent/plaintiff submits that the plaintiff witness has been examined. The plaintiff witness was also cross examined by the applicant/defendant. Hence, the application filed to set aside the ex-parte order dated 01.11.2022, at the stage when the case was listed for arguments cannot be countenanced.

5. It is further submitted that applicant/defendant has also filed a copy of the written arguments and therefore the application filed at this stage is liable to be dismissed.

6. I have considered the arguments advanced by the learned counsel for the applicant/defendant and the learned counsel for the respondent/plaintiff and also considered the decision of the Hon'ble Supreme Court in the case of **M/s. SCG Contracts India Pvt Ltd Vs. Ks**



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Chamankar Infrastructure Pvt Ltd reported in 2019 (12) SCC 210 and the decision of the Hon'ble Supreme Court in the case of **Iridium India Telecom Ltd Vs. Motorola INC** reported in 2005 (2) SCC 145.

7. As far as the Original Side of the Madras High Court for civil dispute are concerned, it is governed by the provisions of Madras High Court of Original Side Rules, 1994 framed under Section 129 of C.P.C. under the provisions of the Original Sides Rules. A much more restricted period of limitation is prescribed under Order V of Original Side Rules (hereinafter referred to as OSR) for the defendant to file a written statement within a period of six weeks

8. Order IV Rule 5 and Order V Rule 1 of the Original Side Rules reads as under:-

Order IV Rule 5 of O.S.R.	Order V Rule 1 of O.S.R
“Unless otherwise ordered and except as otherwise provided for by these rules, every summons shall require the defendant, if he intends to defend the suit, to enter an appearance and to file a	If the defendant intends to defend the suit, he shall, within the period limited by the summons served on him, file in Court a Written Statement setting out the grounds of his defence in the form prescribed by the Code, and also stating his address for



Order IV Rule 5 of O.S.R.	Order V Rule 1 of O.S.R
written statement within six weeks after service of summons upon him.”	service. Provided that a defendant may file his Written Statement within a further period of five days, if the plaintiff or his advocate consents and signifies such consent by endorsement on the Written Statement. The costs of obtaining and granting consent shall be costs in the cause. The defendant shall, within the said period, give notice to the plaintiff that he has filed a written statement, and of his address for service.”

9. Thus, a written statement has to be filed within a period of 42 days (6 weeks) from the date of receipt of summon with a further grace period of 5th days under the proviso to Order V Rule 1 of Original Side Rules, if the plaintiff or his counsel consents and signifies such consent by making an endorsement on the written statement. Thus, 47 days is available.

10. However, after the expiry of initial 42 days, but before the expiry of 47 days, if the plaintiff or plaintiff's counsel declines to give a consent for extension time of five days to file the written statement, the



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defendant can apply for extension of time in terms of Order V Rule 5 of O.S.R. As per the aforesaid Rule, a Master of the can extend the time existing six weeks from the date of which, the written statement was originally due.

11. In other words, a written statement that has to be filed within a period of expiry of 42nd day (within a period of six weeks) or at the expiry on or before 47th day with the consent of the plaintiff or his plaintiff's counsel or with an application for condoning the delay is Order V Rule 5 of C.P.C. at the expiry on or before 84th day (42+42) .

12. The restricted period of limitation prescribed under the Original Side Rules which is otherwise binding on the defendants in a regular civil suit who are governed by the Rules will not apply to a “commercial dispute.” within the meaning of Section 2(c) of Commercial Courts Act, 2015.



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13. Any Commercial Dispute before a Commercial Courts or Commercial Division or Commercial Appellate Division will be governed by the provisions of CPC as amended for the purpose of Commercial Courts Act, 2015.

14. As per Section 16(3) of the Commercial Courts Act, Amendments to the provisions of the Code of Civil Procedure, 1908 will apply. Section 16(3) of the Commercial Courts Act, 2015 reads as under:-

“where any provisions of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of Code of Civil Procedure as amended by this Act shall prevail”.

15. As per the said provision where any provisions of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of Code of Civil Procedure as amended by this Act shall



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prevail.

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16. Therefore, the arguments advanced by the learned counsel for the defendants for in support of the present application seeking to rely on the decision of the Hon'ble Supreme Court in *Iridium India Telecom Ltd., vs. Motorola Inc.* (2005) 2 SCC 145 has no merits. Therefore, the said argument deserves to be rejected. Thus, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended for the purpose of Commercial Courts Act, 2015, is applicable.

17. As far as commercial disputes are concerned, there is a special dispensation under Order VIII Rule 1 of C.P.C. r/w Order V Rule 1 of C.P.C as amended for the purpose of Commercial Courts Act, 2015. They read as under:-

Order V Rule 1 of C.P.C.	Order VIII Rule 1 of C.P.C.
When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file	Written Statement: The defendant shall, within thirty days from the date of service of summons on him, present a



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Order V Rule 1 of C.P.C.	Order VIII Rule 1 of C.P.C.
the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant	written statement of his defence.
“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”.	<i>“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”.</i>

(Italics portion has been amended for the purpose of Commercial Courts Act, 2015)



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18. The time lines prescribed for filing written statement for Commercial Disputes under the Commercial Courts Act, 2015 are mandatory and not directory and cannot be diluted.

19. Therefore, either way the above application filed by the applicant/defendant to set aside the order dated 01.11.2012 setting the applicant/defendant is without any merits. Therefore, the application filed at this stage to set aside the order dated 01.11.2022 setting the defendant *ex-parte* cannot be allowed. It is however open for the applicant/defendant to make in the oral submissions as and when the suit is listed for oral arguments.

20. In the light of the above discussion, this application is dismissed.
There shall be no order as to costs.

03.01.2023

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