

**+ IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No.17203 of 2024

Indian Oil Corporation Limited ... Petitioner
V/s.
Godrej & Boyce Manufacturing Company
Ltd. & anr. ... Respondents.

Mr. Chirag Mody a/w. Mr. Amit Meharia a/w. Tannishtha Singh a/w. Mr. Shubham Sawant a/w Tushar Awasthi i/b. Meharia & Co.	Advocate for the Petitioner.
Mr. Sagar Divekar a/w. Abhimanyu Mhapankar	Advocate for Respondent No.1.

LATA
SUNIL
PANJWANI

CORAM : S.M. MODAK, J

DATE : 09 December 2024.

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P.C. :

Heard learned Advocate Shri Mody for the petitioner-defendant No.2 and Shri Divekar for respondent No.1 -plaintiff.

2. The Additional Sessions Judge, City Civil & Sessions Court, Mazgaon, Greater Mumbai as per the order dated 29 July 2024 has dismissed Notice of Motion No.2526/2024 filed by defendant No.2 in a pending Commercial Suit No.582/2024. The Motion is on Page No.260. The prayer clause is as follows:

“Allow the Defendant No.2 to file the Written Statement in two distinct parts, along with two separate Applications for Condonation of Delay, two applications under Order VII Rule 11, and two separate Affidavits of Admission/Denial, and allow the same to be taken on record;”

3. There was a suit filed by respondent No.1 against present respondent No.2 as defendant No.1 and present petitioner as defendant No.2 for recovery of Rs.1,36,43,950. It is in respect of unpaid bills for the work executed by the plaintiff as instructed by defendant No.1. Those works are executed at two refineries belonging to defendant No.2. They are at Bongaigaon site and Haldia site. Defendant No.2 appointed defendant No.1 to execute certain works and in turn defendant No.1 appointed the plaintiff to execute that work.

4. Defendant No.2 was supposed to file a written-statement. Instead of filing one written-statement, defendant No.2 sought permission of the trial Court to file written-statement in two distinct parts along with two different applications for condonation of delay and under the provisions of Order VII Rule 11 of CPC.

5. The learned trial Judge as per impugned order has rejected that prayer. The learned Judge has quoted the provisions of Order 8 Rule 7 of CPC. It deals with what can be the manner of averment in a written-statement. When defence is founded on separate and distinct facts, they shall be stated as far as may be separately and distinctly. When defence is founded on separate and distinct facts, they shall be

stated as far as may be separately and distinctly. The learned Judge in Para No.7 has observed the procedure for filing two written-statements by one defendant, if unheard and not provided in the CPC. Similar are the observations in respect of the prayers for other applications.

6. Learned Advocate Shri Mody has invited my attention to the written-statement affirmed by two separate officers. One written-statement is affirmed by the officer who is posted at Bongaigaon Refinery (Page-237) whereas another set of written-statement is affirmed by the officer who is posted at Haldia refinery. According to Mr. Mody these two written-statements are filed.

7. According to learned Advocate Divekar for respondent No.1-plaintiff the contract executed is only with the same entity i.e Indian Oil Corporation and they may be having different refineries. It does not permit them to file separate written-statement. He has invited my attention to one correspondence dated 26 September 2016 (Page-49) and the correspondence on the next page. It is correspondence made by the present petitioner addressed to defendant No.1. The emphasis in those correspondence is both the refineries are mentioned including one more refinery.

8. It is true that if the defendant is one, he can file only one written-statement unless additional written-statement is permitted. It is for the reason that the defendant is supposed to deal with all the

averments in the plaint and his additional plea one by one in the same written-statement only. In this case the plaintiff has averred that they were appointed by defendant No.1 to execute some contract and present petitioner has appointed defendant No.1 to execute some contract. There are prayers against both the defendants in the suit. According to Mr. Divekar the present petitioners have guaranteed the payment to be made by defendant No.1 in favour of the plaintiff. According to him that is the additional fact on which they want to enforce the liability against defendant No.2 also.

9. At this stage we are only considering whether two written-statements can be filed by the same defendant at one and the same time. The learned Judge is correct that there is no provision in a written-statement dealing with the present contingency. However, it is always said that procedure of law is handmade of justice and we have to interpret it on the basis of facts and circumstances in order to advance the cause of the justice. Mr. Mody relied upon the observations in the case of *Sugandhi (Dead) by legal representaives and anr. vs. P. Rajkumar represented by his Power Agent Imam Oli*¹. The procedural and technical hurdles shall not be allowed to come in the way of Court while doing substantial justice.

10. If the petitioners want to deal with the averments in the plaint, the facts connected to the individual refinery and if they feel that by filing two separate written-statements at the same time, they can deal with the averments efficiently and keep their case more effective, this

1 (2020) 10 Supreme Court Cases 706

Court feels that can be done. It is true that one written-statement has to be filed but the procedure of law does not prohibit for filing two written-statements by one and the same defendant. It is true in respect of facts pertaining to one refinery, the concerned officer of other refinery may not be conversant with those facts. So it is difficult for defendant No.2 to plead it effectively in one and same written-statement. So the prayer needs to be allowed.

11. It is true that those two written-statements can be taken on record when the trial Court will condone the delay. By way of notice of motion only there is a prayer to file two written-statements and delay condonation application. After hearing parties on merits if the delay is condoned then only these written-statements can be taken on record.

12. The learned Advocate Mody submitted that even if this Court will grant them permission, he has got instructions to say that they will file only one application under the provisions of Order 7 Rule 11 of Civil Procedure Code. In view of that following order is passed:-

ORDER

- 1) The Order dated 29 July 2024 passed by the Additional Sessions Judge, City Civil & Sessions Court is set aside.
- 2) The present petitioner-defendant No.2 is permitted to file two separate delay condonation applications.
- 3) The trial Court to decide them on merits.

- 4) If the same are allowed, then the present petitioner be permitted to file two written-statements.
- 5) Writ Petition stands disposed of.

(S.M. MODAK, J.)