

2024:PHHC:122839



127 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3748-2024 (O&M)

Reserved on:-25.07.2024

Pronounced on:-16.09.2024

Score Rating Agency and Constituting Pvt.Ltd

...Petitioner

vs.

OMG Network India Pvt.Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Prateek Sodhi, Advocate and
Ms.Jasmine, Advocate,
for the petitioner.

Mr.Mayank Arora, Advocate for
Mr.Abhinav Agrawal, Advocate,
for the respondent.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 07.03.2024 (Annexure P-8) passed by the learned Additional District Judge-cum-Presiding Judge Exclusive Commercial Court at Gurugram, whereby, an application under Order 9 Rule 7 CPC, filed at the instance of petitioner, seeking setting aside of the order dated 26.05.2023, stands partly allowed/dismissed.

2. In the present case, respondent-plaintiff filed a suit for recovery of Rs.1,65,05,278/- against the petitioner-defendant.

3. Upon notice, the petitioner appeared on 13.03.2023 through an

Advocate and filed memo of appearance but no written statement was filed, however, on 24.04.2023, the counsel of the petitioner, apart from filing his Vakalatnama, also moved an application under Order 7 Rule 11 CPC, seeking rejection of the plaint. Thereafter, the counsel for the petitioner did not appear and petitioner was thus, proceeded ex-parte vide order dated 26.05.2023 by the Court below; resultantly, the proceedings in the suit were fixed for ex-parte evidence of the respondent. On 28.09.2023, respondent examined PW-1 and closed its evidence. Later, on 13.10.2023, the petitioner filed an application under Order 9 Rule 7 read with Section 151 CPC, seeking setting aside of ex-parte proceedings, which came to be partly dismissed by the Court below vide order dated 07.03.2024, while allowing it to join the proceedings from the stage the same were pending at the time of filing of application.

4. Impugning the aforesaid order dated 07.03.2024, learned counsel for the petitioner submitted that by the date i.e. 26.05.2023, on which the petitioner was proceeded against ex-parte, 120 days in terms of Order 8 Rule 1 CPC had not expired. He thus submitted that since the petitioner was able to establish sufficient cause of its non-appearance on account of bonafide confusion about providing clear and adequate instructions to the counsel, application seeking setting aside of order dated 26.05.2023, was liable to be granted by allowing the petitioner to file written statement. He further submitted that point being professed before this Court was that in such facts and circumstances Order 8 Rule 1 CPC would not come into operation as the Court was dealing with an application under Order 9 Rule 7 CPC only.

(4.1) Learned counsel further pointed out that in the wake of

observations made by the Hon'ble Apex Court in "***Prakash Corporates vs. Dee VEE Projects Limited***", 2022(2) RCR(Civil) 158, wherein, even the case of ***M/s SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt.Ltd.& Ors***,2019 (2) RCR (Civil) 249 was discussed and dealt with; a liberal view was required to be taken in the present case as the stage of filing of written statement was yet to arrive, an application under Order 7 Rule 11 CPC being filed at the instance of petitioner-defendant and sub-judice before the trial Court. Relevant para 26 of ***Prakash Corporates's*** case (supra) as relied upon is reproduced hereunder for reference:-

"26. Apart from the above, yet another significant feature is that on the very first day of appearance, i.e., on 18.01.2021, the appellant moved an application under [Section 10](#) read with [Section 151](#) CPC for stay of the suit proceedings on the ground that proceedings between the parties relating to the subject matter of the suit were pending before the NCLT. The respondent had earlier moved an application seeking directions of attachment before judgment in terms of [Order XXXVIII CPC](#). Both the applications as moved by the appellant as also by the respondent remained pending and, on 15.03.2021, the Trial Court adjourned the matter to 15.04.2021 for arguments on both these applications. On 15.04.2021, no business could be transacted and the matter was adjourned to 22.06.2021, again for arguments on these applications. Even when the matter was taken up on 22.06.2021 and the Trial Court declined the prayer of the appellant for another opportunity for filing the written statement, it did not take up the said applications for consideration and adjourned the matter to 09.07.2021. We are not commenting on merits of the application moved by the appellant under [Section 10](#) CPC but, it cannot be gainsaid that such an application, by its very nature, required immediate consideration and before any other steps in the suit. It needs hardly any emphasis that if the prayer made in

the application moved under [Section 10](#) were to be granted, the trial of the subject suit was not to be proceeded with at all. We find it rather intriguing that on one hand, the Trial Court itself posted the matter for consideration of that application along with the other application moved by the respondent but did not take them up on 22.06.2021 and adjourned the matter after declining the prayer for filing written statement. Even when the Trial Court considered the step of filing the written statement to be of importance in view of the time limit and consequences stated in the statute, there was no justification that the Trial Court did not simultaneously take up the application under [Section 10](#) CPC for consideration.

26.1. We are constrained to reiterate the unquestionable principles that the rules of procedure are essentially intended to subserve the cause of justice and are not for punishment of the parties in conduct of the proceedings. Of course, in the ordinary circumstances, the mandates of Rule 1(1) of Order V, Rule 1 of Order VIII as also Rule 10 of Order VIII, as applicable to the Commercial dispute of a Specified Value, do operate in the manner that after expiry of 120th day from the date of service of summons, the defendant forfeits the right to submit his written statement and the Court cannot allow the same to be taken on record but, these provisions are intended to provide the consequences in relation to a defendant who omits to perform his part in progress of the suit as envisaged by the rules of procedure and are not intended to override all other provisions of [CPC](#) like those of [Section 10](#). These comments are necessitated for the reason that the Trial Court seems to have simply ignored the requirements of dealing with the pending applications with requisite expedition. We say no more.”

(4.2) Learned counsel also submitted that in no way the provisions of Commercial Courts Act, 2015 (for short, “2015 Act”) were to override the other procedural provisions from Code of Civil Procedure, especially, when

the power being exercised under Order 9 Rule 7 CPC by the Trial Court was nowhere in direct conflict with the amendment of Ist Schedule in the shape of second proviso to Order 5 Rule 1, sub-rule 1, proviso to Rule 1 under Order 8 and proviso to Rule 10 under Order 8 CPC.

Learned counsel further submitted that in case, the petitioner was permitted to participate in the suit upon putting in appearance and filing defence, no prejudice would be caused to the respondent-plaintiff as only one witness was examined so far by the respondent-plaintiff before the trial Court, whereas, passing of impugned order if sustained, would cause serious prejudice to the rights of the petitioner. No other argument was addressed.

5. On the other hand, learned counsel for the respondent-plaintiff submitted that in terms of the law laid by the Hon'ble Apex Court in ***M/s SCG Contracts India Pvt. Ltd.'s*** case (Supra), the limit prescribed under 2nd proviso to Order 5 Rule 1, sub-rule 1, proviso to Rule 1 under Order 8 and proviso to Rule 10 under Order 8 CPC was non-negotiable; these provisions being mandatorily in nature. He further submitted that the observations made by the Hon'ble Apex Court in case of ***Prakash Corporates's*** case (supra), were under specific circumstances relating to Covid-19 situation and this aspect was even dealt with by the Delhi High Court in different judgments, titled as ***"Royalgolf Link City Projects Pvt.Ltd. and others vs. Times Innovative Media Ltd."*** 2023 SCC OnLine Del 298 and ***"Parmeshwar Jana vs. Lakhan Singh"*** 2023 SCC OnLine Del 300".

(5.1) Learned counsel for the respondent further submitted that Section 21 of the 2015 Act, carried non-obstantive clause and thus reflected

an overriding effect over the procedure laid down under CPC. He also submitted that even as per the normal rules of interpretation, the special act/law was to prevail over the general law and that too the procedural one, which could even be deciphered from the object and reasons of the 2015 Act, the same been enacted with the sole object of early and speedy disposal of commercial litigation. In this regard, he placed reliance upon decision passed by the Hon'ble Supreme Court in ***“Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP and another” (2020) 15 SCC 585*** and para 36 thereof being relevant is extracted hereunder:-

“A perusal of the statement of objects and reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the statement of objects and reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. IF the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. Putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. IF we take a closer look at the statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense.”

6. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioner.

7. In the factual circumstances of the present case, as the impugned order pertains to an application filed under Order 9 Rule 7 of CPC, it becomes necessary to peruse the same which is reproduced hereunder:

“7. Procedure where defendant appears on day of adjourned

hearing and assigns good cause for previous non-appearance.—

Where the Court has adjourned the hearing of the suit, ex parte, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

7.1 A perusal of this provision makes it apparent that in a case where a defendant has been declared ex parte, and he “appears at or before” on the date of next hearing and able to provide “good cause for his previous non-appearance”, then he may be heard with regard to the suit as if he had appeared on the day fixed for his appearance. Petitioner, in the instant proceeding, was declared ex parte on 26.05.2023, while application under Order 9 Rule 7 read with section 151 CPC was filed on 13.10.2013 for setting aside the said order as well as to annul the ex-parte proceedings. Ld. Commercial Court vide impugned order dated 07.03.2024, partly allowed the application to the extent that the petitioner was permitted to join proceedings of the case from the date the application was moved by it.

7.2 In these circumstances, the primary grievance of the petitioner is that if ex-parte order is not set aside and petitioner is not allowed to join the proceeding as on 26.05.2023, it will cause serious prejudice to its right in the absence of any written statement being filed. But, in view of the amendments carried out in the CPC in relation to the proceeding before Commercial Court as per the mandate of 2015 Act, there is no scope of any interference in the impugned order in the present facts.

8. While examining the statutory regime around the 2015 Act, it can be noted that in “Commercial dispute of a Specified Value”, procedure to be followed by the Commercial Courts would be as defined in the CPC

but, as amended under the schedule of the 2015 Act, which is evident from Section 16 of 2015 Act, the same is reproduced hereunder:

“
CHAPTER VI
**AMENDMENTS TO THE PROVISIONS OF THE CODE OF
CIVIL PROCEDURE, 1908**
**16. Amendments to the Code of Civil Procedure, 1908 in its
application to commercial disputes.**—(1) *The provisions of the Code
of Civil Procedure, 1908 (5 of 1908) shall, in their application to
any suit in respect of a commercial dispute of a Specified Value,
stand amended in the manner as specified in the Schedule.*
*(2) The Commercial Division and Commercial Court shall follow the
provisions of the Code of Civil Procedure, 1908 (5 of 1908), as
amended by this Act, in the trial of a suit in respect of a commercial
dispute of a Specified Value.*
*(3) Where any provision 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 the Code of Civil Procedure as amended by this Act
shall prevail.”*

8.1 Accordingly, the provisions of CPC in Order 5 Rule 1 (1), Order 8 Rule 1 and Order 8 Rule 10, concerning the time period within which written statement could be filed and the consequences of default, stand amended in their application to the suit before Commercial Courts and for convenience, the same are reproduced hereunder:

Order 5, Rule 1

"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.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear:-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court."

Order 8, Rule 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."*

Order 8, Rule 10

"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 that no Court shall make an order to extend the time provided under rule 1 of this Order for filing of the written statement."*

8.2 A joint perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days, though a further grace period of 90 days may be granted by the Court for reasons to be recorded in writing. But a distinctive change which is required to be noted is

that beyond 120 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.

9. The statements of Objects and Reasons of the 2015 Act, clearly indicates that the intent behind amending the provisions of CPC for the purpose of this Act was to provide for speedy disposal of high value commercial disputes. Objects and Reasons of the 2015 Act are reproduced hereunder:

"The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high value commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system."

9.1 Apart from **Ambalal Sarabhai Enterprises Ltd's case** (supra), which has been relied upon by the ld. Counsel for the respondent, in **"Jaycee Housing Private Limited v. Registrar (general), Orissa High Court, Cuttack"**, reported as (2023) 1 SCC 549, as well, the Hon'ble Apex Court after traversing through the legislative history of 2015 Act and relying upon the objects and reasons thereof, held that provisions of 2015 Act would prevail in commercial disputes. Relevant para of this judgment is reproduced hereunder:-

"10. Thus, the Objects and Reasons of Commercial Courts Act, 2015 is to provide for speedy disposal of the commercial disputes which includes the arbitration proceedings. To achieve the said Objects, the legislature in its wisdom has specifically conferred the jurisdiction in respect of arbitration matters as per Section 10 of the Act, 2015. At this stage, it is required to be noted that the Act, 2015 is the Act later in time and therefore when the Act, 2015 has been

enacted, more particularly Sections 3 & 10, there was already a provision contained in Section 2(1)(e) of the Act, 1996. As per settled position of law, it is to be presumed that while enacting the subsequent law, the legislature is conscious of the provisions of the Act prior in time and therefore the later Act shall prevail. It is also required to be noted that even as per Section 15 of the Act, 2015, all suits and applications including applications under the Act, 1996, relating to a commercial dispute of specified value shall have to be transferred to the Commercial Court. Even as per Section 21 of the Act, 2015, Act, 2015 shall have overriding effect. It provides that save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

Therefore, the contention raised by Id. Counsel for the respondent holds substance that provisions of 2015 Act would prevail over CPC in case of any commercial conflict.

9.2 Mandatory nature of these provisions were also upheld by the Hon’ble Apex Court in **SCG Contracts’ case** (supra) while observing that 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, cumulatively points to the fact that the earlier law on filing of written statement under Order 8, Rule 1 CPC was set at naught.

9.3 As argued by learned Counsel for the respondent, reliance placed by the learned counsel for the petitioner on **Prakash’s case**(supra) was misplaced as this judgement was passed under exceptional circumstances when Covid-19 pandemic was at its peak and orders passed by the Supreme Court exercising its power under Article 142 of the Constitution of India for extending the limitation period were in force. Even, the Apex Court in **Prakash’s case**(supra) observed that under normal and non-extraordinary circumstances with the usual functioning of Courts, strict

interpretation of these provisions would prevail and it was only under abnormal and extraordinary circumstances that relaxation might be granted.

Relevant para from this judgment is reproduced hereunder:-

“17. 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. The question in the present case is, as to 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? In our view, the answer to this question cannot be in the affirmative for a variety of reasons, as indicated infra.”

10. If we apply the aforesaid legal position to the facts and circumstances of this case, no fault can be found with the impugned order passed by the Commercial Court. It would be contrary to note here that if application made by petitioner is allowed in *toto* and he is allowed to join the proceedings from 26.05.2023, the date he was declared *ex parte*, it would be completely in violation of the spirit and purpose of the 2015 Act which mandates early resolution of such cases. Though learned Counsel for the petitioner argued that proceedings under Order 9 Rule 7 CPC and provisions with respect to written statement(s) are different, however, petitioner if permitted to join from that date, would be having a right to file the written statement, which would be equivalent to allowing something indirectly that

cannot be done directly. Accordingly, there is no doubt that other provisions of CPC would continue to operate but they cannot be interpreted in a manner that would nullify the effect of specific provisions of 2015 Act. Therefore, contention of learned counsel for the petitioner that provisions of Order 8 Rule 1 CPC would not come into the picture, does not hold any substance.

10.1 It is also evident that no exceptional circumstance was present in this case. Counsel for the petitioner first appeared on 13.03.2023 and in view of that, the period of 120 days expired on 11.07.2023, but till then no written statement was filed by the petitioner. Rather on account of absence, the petitioner was declared ex parte on 26.05.2023 and even the application to set aside this order was made on 13.10.2023 i.e. after expiry of 5 months. In this application, no sufficient reason was mentioned by the petitioner for the delay and apparently blunt excuse was provided that the representative of the petitioner fell ill and no instructions could be issued to the Advocate. Leaving aside any documentary proof regarding his illness being brought on record, even necessary details regarding the same were not mentioned in the application. There was no explanation as to when the above representative started feeling better and what steps were taken by him thereafter. Additionally, apart from the illness of the representative of the petitioner, no reason at all was provided to explain that what took them around 5 months to file this application. In such circumstances, explanation provided by the petitioner was not to be treated, sufficient at all.

10.2 This conduct of the petitioner was further aggravated from the fact that in reply filed by the respondent with respect to this application, multiple other cases were enumerated, wherein, petitioner was being duly

represented before the same Court and it was only in this case that no presence was being made. There was no specific denial on this aspect from the petitioner, leading to a presumption that the petitioner was deliberately avoiding proceedings in the present case.

10.3 Even further, a perusal of order dated 24.04.2023 passed by the commercial Court revealed that a caution was recorded in this order itself regarding the amended provisions related to time limit for filing written statement and applicable to Commercial disputes but rather than taking any corrective steps in this regard, petitioner chose to keep away from the proceedings. Relevant part of this order dated 24.04.2023 is reproduced here under:-

“ ***

For reply and arguments, to come up on 26.05.2023.

As written statement has not been filed, defendant may bear in mind the provisions of Order 8 Rule 1 CPC as amended and applicable to commercial disputes.

***”

10.4 The fact that an application under Order 7 Rule 11 CPC was pending on the said date, would not come to his rescue as this similar contention was negated in **SCG contracts’ case** (supra) by the Hon’ble Apex Court. Relevant para from this judgment is reproduced hereunder:-

“14. Learned counsel appearing for the respondents also relied upon R.K. Roja v. U.S. Rayudu and Another (supra) for the proposition that the defendant is entitled to file an application for rejection of plaint under Order 7, Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order 7, Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records "However, we may hasten to add that the liberty to file an application for rejection under Order 7, Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement". ”

10.5 Therefore, a cumulative analysis of all the circumstances shows that petitioner while defending its case, acted in irresponsible and negligent manner and if any prejudice is being caused to him, it is because of his own act and conduct and for that he is bound to bear consequences. Additionally, suit in the present case was filed by the respondent in the beginning of 2023 and even in August 2024, the case has not come to a closure and still dragging on its feet; while the respondent is still awaiting for the outcome of this case to get its dues and in these circumstances, respondent cannot be made to suffer for petitioner's fault.

11. In view of the discussion made above, no interference is warranted in the order dated 26.05.2023 passed by the Commercial Court and accordingly, finding no merit in the present petition, the same is hereby dismissed.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

16.09.2024

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/ No