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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5649-2024 (O&M)
Date of decision: 03.10.2024

M/s Yash Fabtech Enterprises and another

...Petitioners

Versus

M/s Shree Sai Steels

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vineet Kumar Jakhar, Advocate for the petitioners.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 09.07.2024 (Annexure P-1) passed by the Commercial Court-cum-Civil Judge (Junior Division), Faridabad in Commercial Suit No.26/2024 titled as “M/s Shree Sai Steels V/s M/s Yash Fabtech Enterprises and Co etc” instituted on 08.02.2024, whereby the defence of the petitioners has been struck off and the issues have been framed.

2. Brief undisputed facts of the present case are that the respondent had filed a suit for recovery of Rs.17,07,896/- along with interest against the present petitioners in the Court of Civil Judge Senior Division, (Commercial Court), Faridabad on 08.02.2024. On 19.02.2024, service was effected upon the petitioners and thereafter, the case was adjourned to



18.03.2024. It is the case of the present petitioners that on 18.03.2024, the case was adjourned to 09.07.2024. No written statement was filed on 18.03.2024 by the petitioners. Even on 09.07.2024, the written statement was not filed by the petitioners and accordingly, since the period of 120 days had elapsed, as the present suit had been instituted in the Commercial Court, the defence of the petitioners was struck off in view of the law laid down by the Hon'ble Supreme Court in the case **"M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others,"** reported as **2019(12) SCC 210**, and the issues were framed and the case was adjourned to 23.08.2024 for evidence of the plaintiff. The zimni order dated 23.08.2024 has not been annexed with the paper book. It is the order dated 09.07.2024 which has been challenged by the petitioners.

3. Learned counsel for the petitioners has submitted that in the present case, although service was effected upon the petitioners on 19.02.2024 and the case was adjourned to 18.03.2024 on which date, memo of appearance was filed on behalf of the petitioners and a prayer was made to file the written statement but the matter was adjourned to a very long date, i.e., 09.07.2024, which was beyond the period of 120 days and that the Court should not have granted such a long date in view of the law laid down in **M/s SCG Contracts India Pvt. Ltd.'s** case (Supra). It is submitted that thus, it was the bona fide omission of the Court for which the petitioners should not suffer and thus, he has prayed that the impugned order be set aside and the petitioners be granted one opportunity to file the written statement.

4. This Court has heard learned counsel for the petitioners and has perused the paper-book.



5. The Hon'ble Supreme Court in the case of ***M/s SCG Contracts India Pvt. Ltd.*** (supra), had observed that a perusal of the provisions of Commercial Courts Act, 2015 would show that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and that there is a mandate for the Court not to allow the written statement to be taken on record. It was further observed that merely because an application for rejection of the plaint under Order 7 Rule 11 CPC has been filed, the same cannot be made as a “ruse for retrieving the lost opportunity to file the written statement”. In view of the said proposition of law, the Hon'ble Supreme Court had set aside the impugned order therein, which had permitted the defendant therein to file the written statement beyond the stipulated period of 120 days. The relevant portion of the said judgment is reproduced as under: -

“8) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

“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.”

Equally, in **Order 8 Rule 1**, a new proviso was substituted as follows:

“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.”

This was **re-emphasized by re-inserting** yet another proviso in **Order 8, Rule 10 CPC**, which reads 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.

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written



statement to come on record. What is of great importance is the fact 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. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

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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 VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.**

12) However, learned counsel appearing for the respondents relied strongly upon the judgment in **Bhanu Kumar Jain (supra) and Shaikh Salim Haji Abdul Khayumsab (supra)** and, in particular, paras 22 and 27 of the first judgment and paras 4 & 19 of the second judgment.

13) We are of the view that since both these judgments dealt with the pre-amendment position, they would not be of any direct reliance insofar as the facts of the present case is concerned.

14) Learned counsel appearing for the respondents also relied upon **R.K. Roja Vs. U.S. Rayudu and another (supra)** for the proposition that the defendant is entitled to file an application for rejection of plaint under **Order VII 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 VII**



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”.

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17) Clearly, therefore, the 05.12.2017 order which applies in the face of the amendments made to the Civil Procedure Code cannot be sustained.....”

6. In the present case, it is not in dispute that the suit for recovery was filed before the Commercial Court, Faridabad on 08.02.2024 and the service was effected upon the petitioners on 19.02.2024 and the case was thereafter, adjourned to 18.03.2024, although the zimni order dated 19.02.2024 has not been annexed with the paper book. On 18.03.2024, the written statement was not filed and the case was adjourned to 09.07.2024 for filing the written statement and the said order was passed in the presence of counsel for the petitioners before the trial Court. No plea was raised by the counsel for the petitioners before the trial Court to grant a short adjournment. Importantly, even on 09.07.2024, as is apparent from the zimni order dated 09.07.2024, the written statement was not filed and thus, in view of the law laid down in ***M/s SCG Contracts India Pvt. Ltd.’s*** case (Supra), the Commercial Court had rightly struck off the defence of the petitioners and had framed the issues and had adjourned the matter to 23.08.2024. The zimni order dated 23.08.2024 has also not been annexed with the paper book. The argument sought to be raised by learned counsel for the petitioners to the effect that a long date was given on 18.03.2024 and



accordingly, the present revision petition should be allowed, cannot be accepted as even on 09.07.2024, the written statement was not filed by the petitioners. Furthermore, the order dated 18.03.2024 was passed in the presence of the counsel for the petitioners before the trial Court and no prayer for grant of a short date was made. Moreover, there was no bar for the petitioners to file a written statement within a period of 120 days by moving an appropriate application before the trial Court even prior to the next date of hearing, i.e., 09.07.2024.

7. Keeping in view the abovesaid facts and circumstances, this Court finds that the impugned order is in accordance with law and thus, deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

03.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No