



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

950 WRIT PETITION NO. 1218 OF 2024

JAYALAXMI TRADERS THROUGH ITS PROPRIETOR N.S. PRASAD
NANJUNDAIAH

VERSUS

MAHYCO PVT LTD THROUGH ITS SPECIFIC POWER OF ATTORNEY
PRVEEN VIJAY UPADHYAY

Mr. L. B. Palod, Advocate for the Petitioner
Mr. N. K. Choudhari, Advocate for the Respondent

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2025

P.C. :-

1. Heard.
2. This Petition takes exception to the order dated 21/12/2023 passed by District Judge-1 in Commercial Appeal No. 1/2023, whereby the District Court has refused to cause interference in the order passed by the Commercial Court in Commercial Suit No. 1/2023 rejecting the Application for condonation of delay for filing written statement beyond 120 days of the service of summons.
3. There is no dispute about the fact that the Petitioner/original Defendant sought to file written statement after 120 days of the receipt of summons. Learned Counsel for the Petitioner, however, has attempted to convince this Court by relying upon the judgment of Co-ordinate Bench of this Court in case of *Remedial Resolutions Advisors*

Private Limited & Ors. Vs. Capri UK Investments Limited & Ors.¹ It is his submission that in the similar facts, the High Court has permitted the filing of the written statement beyond 120 days as the reasonable ground is made out therefor.

4. There is no dispute about the fact that to the case in hand provisions of Code of Civil Procedure (for short 'CPC') would apply. The Hon'ble Supreme Court in case of ***SGC Contracts (India) Private Limited Vs. K.S. Chamankar Infrastructure Private Limited & Ors.***² after considering the provisions of Order V, Rule 1 and Order VIII Rules 1 and 10, of the Code, as amended by the Commercial Courts Act, which prescribe the time limit for filing a written statement, held that :

"(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."

5. The above judgment, therefore, clearly indicates that the written statement in a commercial suit is required to be filed within a period of 120 days in view of proviso to Rule 10 Order VIII and that the Court has no power to extend the time beyond the said period of 120 days. It is held by the Hon'ble Supreme Court that the said provision is

¹ 2020(2) ALL MR 808

² (2019) 12 SCC 210

mandatory.

6. On the other hand in case of *Remedial Resolutions Advisors Private Limited & Ors. Vs. Capri UK Investments Limited & Ors.* (supra), the issue fell for consideration before Co-ordinate Bench of this Court was as to whether the Original Side Rules will prevail over the provisions of Court. It is held in paragraph No. 29 as under:

"29. On the aforesaid touchstone, reverting to the controversy at hand, if it is held that the provisions of the Original Side Rules still prevail over the provisions of the Code, as amended by the Commercial Courts Act, 2015, the object of expeditious disposal of the commercial causes suits, for which a special machinery and procedure is enshrined by the Commercial Courts Act would be defeated. Thus, in my view, the interdict contained in Rule 90 of the Original Side Rules may not apply with equal force to the suit in respect of a commercial dispute filed on the Commercial Division of the High Court."

7. Thus, the view of this Court is about Rule 90 of Original Side Rules prevailing over the provisions of the Civil Procedure Code as amended by the Commercial Courts Act, 2015. This Court has also held that the interdict contained in Rule 90 of the Original Side Rules may not apply with equal force to the suit in respect of a commercial dispute filed on the Commercial Division of the High Court. Thus, in the said case, having regard to the fact that the Original Side Rules would apply to the commercial dispute filed before Commercial Division of the High Court, it is held that the provisions of CPC would not apply thereto and hence condonation of delay beyond 120 days is permissible. In the

instant case, however, admittedly, the provisions of CPC would apply and not Original Side Rules, as such the said judgment has no application to the present case.

8. In view of the settled position of law on the issue involved herein, there is no merit in the petition. Petition therefore stands dismissed.

(R. M. JOSHI, J.)

ssp