



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12606 OF 2024

The State Of Maharashtra Through Secretary Rulal
Development Department Mantralaya Mumbai

VERSUS

Patil Constraction And Infrastructure Ltd Thr Its Authorized
Person Rohit Anilkumar Chavan

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Mr. B. B. Bhise, AGP for Petitioner-State

Mr. P. S. Patil, Advocate for Respondent No.1

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CORAM : ROHIT W. JOSHI, J.

DATED : 11TH JUNE, 2025

PER COURT :-

. The petitioners in the present petition are arrayed as defendant nos.1 to 3 and 6 in Commercial Civil Suit No.1 of 2023. The summons in the matter were not issued since the learned AGP appeared in the matter on 08.03.2023 and waives service on behalf of the petitioners. The petitioners did not file written statement within the period stipulated. Petitioners, however, filed an application dated 18.09.2023 vide Exh. 22, interalia praying that delay of six months caused in filing written statement may be condoned and written statement be accepted on record.

2. It is stated in paragraph no.10 of the petition that on

18.09.2023, alongwith the said application at Exh.22, a pursis was filed stating that the petitioner/defendant nos.1 to 3 and 6 intended to adopt the written statement filed by defendant no.4 and 5 as a written statement. It is stated that the learned Trial Court did not mark the said pursis as exhibit.

3. The learned Trial Court has rejected the application for condonation of delay in filing written statement and taking the written statement on record vide order dated 05.08.2024. The learned Trial Court has observed that Order-VII Rule 1 of the Civil Procedure Code is amended by Section 16 read with entry no.D(i) in the schedule appended to the Commercial Courts Act, 2015, thereby prescribing outer limit of one hundred twenty days for filing written statement. Provisions as amended also lay down that if the defendant does not file written statement within the outer limit of one hundred twenty days, shall forfeit the right to file written statement. In view of the said mandatory provision, the learned Trial Court has rejected the application for condonation of delay in filing written statement and has accordingly refused to take written statement on record.

4. The learned AGP appearing for the petitioners states that the learned Trial Court ought to have accepted the written statement in the interest of justice. He further contends that the learned Trial Court has erred in not accepting the pursis dated 18.09.2023, by which, the written statement filed by defendant nos.4 and 5 was sought to be adopted as written statement by the present petitioners who are defendant nos.1 to 3 and 6 in the suit. Apart from this, he placed reliance on judgment of the Hon'ble Supreme Court dated 03.11.2022, in the matter of ***Raj Process Equipments And Systems Pvt. Ltd. & Ors Vs. Honest Derivatives Pvt. Ltd. (Civil Appeal No.8089 of 2022)***.

5. In the matter before the Hon'ble Supreme Court, the suit was initially filed as a normal suit and not as a commercial suit. The written statement was sought to be filed after a period of one hundred twenty days, however, before registration of the suit as a Commercial Suit. In that view of the matter, the Hon'ble Supreme Court has held that the provision of Order-VIII Rule 1 of Civil Procedure Code, as amended by the Commercial Courts Act, 2015 will not be

applicable and therefore, Order-VIII Rule 1 of the Civil Procedure Code ought to have been interpreted as directory and not mandatory. Such is not the situation in the case at hand. In the present matter, the suit was filed as a Commercial Suit and provision of Order-VIII Rule 1 as amended by the Commercial Courts Act, 2015 was applicable on the date on which the application seeking permission to file written statement was filed. It is therefore obvious that filing of written statement after one hundred twenty days could not be permitted. In that view of the matter, no fault can be found with the impugned order passed by the learned Trial Court.

6. As regards the submission with respect to pursis, which is not taken on record, the said aspect is not subject matter of the challenge in the present petition. The order impugned in the petition is order passed below Exh.22, it will therefore not be appropriate to make any comment with respect to the said pursis. It also needs to be mentioned that although, statement is made in the petition as regards filing of the prusis, copy of the said pursis is also not placed on record, although, it is

stated that certified copy of pursis could not be obtained, since, the same is not exhibited, the petitioners could have filed office copy of the same on record.

7. In view of the aforesaid, the petition stands dismissed with no orders as to costs.

(ROHIT W. JOSHI, J.)

Rushikesh/2025