

3. The Respondent filed a Commercial Suit for recovery of certain monies, in which the present Appellant is impleaded as Defendant and on 01/10/2022 he received the writ of summons. Though the Advocate appearing on his behalf filed Vakalatnama, but he failed to file written statement within a period of 120 days from the date of service of writ of summons.

On 30/11/2022 the Appellant sought time to file written statement and time was granted, but on account of some personal difficulties, the Appellant could not contact his Advocate and in result, the written statement was not filed.

On 06/03/2023, the Appellant had taken out a Notice of Motion for condonation of delay in filing the written statement and the same came to be rejected by the learned Judge.

4. We have perused the impugned order which specifically focuses upon the issue as to whether the Defendant is entitled for condonation of delay in filing written statement.

The order record that the Suit was filed by the Plaintiff on 04/06/2019 and it received registration as a Commercial Suit on 07/04/2021. It is further noted that on 10/07/2021, writ of summon to defendants was issued and, therefore, it was imperative for him to file the written statement, in accordance with Order VIII, Rule 1 of the Code of Civil Procedure, as amended by the Commercial Courts Act, 2015 in terms of Section 16.

The proviso appended to Order VIII Rule 1 reads thus :-

“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"

5. In the wake of the clear provision to the aforesaid effect, no fault can be found in the impugned order, where the learned Judge has recorded that the Defendant has failed to file the Written Statement within a period of 120 days from 02/10/2022 when the summons was received. The application for condonation of delay was filed on 06/03/2022 and in the wake of the amended provision of Order VIII Rule 1 of the CPC, the learned Judge has rightly held that the Defendant has forfeited his right to file the written Statement and it is not within the powers of the Court to extend this period beyond 120 days, by condoning the delay.

Finding no legal infirmity in the order, by upholding the same, Appeal is dismissed.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)