

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION**

INTERIM APPLICATION NO. 1489 OF 2025

IN

COMMERCIAL ADMIRALTY SUIT NO. 81 OF 2021

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Bhambhani Shipping Ltd.

Applicant

In the matter between

The Board of Mumbai Port Authority

...Plaintiff

V/s.

Halani Star & Ors.

...Defendants

Mr. Dhruva Gandhi with Ms. Charmi Shah i/b Crawford Bayley & Co.
for the Applicant/Defendant No.2.

Mr. Ajai Fernandes with Mrs. Nina Motiwalla, Ms. Janhavi Kandekar
and Ms. Anjali Kotecha for the Plaintiff.

CORAM : ABHAY AHUJA, J.
DATE : 7th NOVEMBER, 2025

ORAL ORDER. :

1. This Interim Application seeks condonation of delay of approximately 684 days in filing the additional written statement and a direction to take the same on record.

2. Mr. Gandhi, learned Counsel appearing for the Applicant submits that this Application has been filed on behalf of the Defendant No.2. Learned Counsel submits that the Complaint was filed on 27th August, 2021 and was registered on 18th December, 2021. The written statement was filed on behalf of the Defendant No. 2 on 8th November, 2021, well

before the expiry of 120 days. That by Interim Application (L) No. 7315 of 2023, the Plaintiff sought to amend the Plaint to incorporate certain claims that had arisen after the filing of the Suit. The said Interim Application was allowed by order dated 11th April, 2023 and by the said order, the Defendants were permitted to file additional written statement to the amended Plaint within a period of three weeks from the service of the amended Plaint.

3. Mr. Gandhi submits that unfortunately the additional written statement on behalf of the Defendant No. 2 remained to be filed and when the Suit came up on 31st January, 2025, leave was sought on behalf of the Defendant No. 2 to file an additional written statement to deny the additional claim by the Plaintiff. Mr. Gandhi submits that at that juncture a question arose as to whether there is any time limit for filing of additional written statement in the context of a commercial suit under the provisions of the Code of Civil Procedure, 1908 ("CPC") as amended by the Commercial Courts Act, 2015.

4. When the matter came up on the 7th March, 2025, reliance was placed on behalf of the Applicant on the following three decisions rendered in the context of Order VIII Rule 9 and 10 of the CPC to

submit that since there was no restriction in order VIII Rule 10 of the CPC, that after expiry of 90 days further time to file written statement cannot be granted, the same logic would also apply to Rule 9 with respect to the filing of the additional written statement and that the Court would have discretion to allow filing of the additional written statement even after the expiry of 30 days as there is no restriction even after the enactment of Commercial Courts Act, 2015 in Order VIII Rule 10 of the CPC that after the expiry of 30 days further time cannot be granted.

*(i) Salem Advocate Bar Association, T. N. Vs. Union of India*¹

*(ii) Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Ors.*²

*(iii) Shobha w/o Wasudeo Tadas and Ors. Vs. Namdeo s/o Balaji Tadas and Ors.*³

5. Mr. Gandhi, learned Counsel submits that it was at the said hearing that the learned Counsel appearing for the Plaintiff contended that it would be appropriate that an application / affidavit is filed on behalf of the Applicant and that is how this application came to be filed on 26th March, 2025.

1 (2005) 6 SCC 344

2 (2009) 15 SCC 528

3 (2016) 2 Mh. L. J. 178

6. Mr. Gandhi submits that under Order VIII Rule 9 of the CPC although the time to file additional written statement is not to be more than 30 days, however, in exceptional cases this Court can extend the same. Mr. Gandhi submits that this Rule is unlike Rule 1 of Order VIII. Further, another feature of Order VIII, which is found in Rule 10, which has been made applicable to commercial disputes vide the Commercial Courts Act is that no Court shall make an order to extend the time provided under Rule 1 of Order VIII for filing a written statement, but such fetters have not been placed on the power of the Court under Rule 9. Mr. Gandhi submits that this necessarily implies that while the time line prescribed in Rule 1 is a strict time line, which cannot be extended under any circumstances, the time line prescribed in Rule 9 is prescriptive and the Court continues to enjoy a discretion to extend the time in exceptional facts and circumstances.

7. Mr. Gandhi further submits that the Hon'ble Supreme Court has observed in the case of *Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Ors.(supra)* that mere delay is not a sufficient ground to refuse to file an additional written statement or to dismiss an application under Rule 9, where no prejudice would be caused to the party opposing the additional written statement.

8. Mr. Gandhi submits that there is sufficient cause for delay in filing the Application. Although three weeks' time to file additional written statement was granted by order dated 11th April, 2023, however, since the Plaintiff had filed an Interim Application (L) No. 26301 of 2023 under Order XIII-A of the CPC seeking a summary judgment, the Defendant No. 2 had drained all its energies in defending the said Interim Application, which was rejected on 18th September, 2024. Mr. Gandhi submits that it was due to the diligent defending by the Applicant that the Interim Application for summary judgment filed by the Plaintiff came to be rejected. That, therefore, the additional written statement could not be filed in the three weeks' time granted. Mr. Gandhi submits that thereafter on the very first opportunity when the Suit came up for directions, after the Application for summary judgment was rejected that the Defendant No. 2 sought leave to file an additional written statement. Mr. Gandhi submits that the *bona-fides* of the Defendant No. 2, therefore, cannot be doubted.

9. Mr. Gandhi further submits that in the present case, no prejudice would be caused to the Plaintiff if the delay in filing the additional written statement is condoned. That the delay is a pre-trial delay as issues have also not been framed and the trial is yet to commence. That

condonation of delay would permit the holistic adjudication of the case and that the Defendant No. 2 would get an opportunity to deny the additional claim made by the Plaintiff. Mr. Gandhi submits that originally the claim of the Plaintiff was for Rs. 1,48,00,642.18, but after the amendment the claim has increased to Rs. 1,66,65,170/-. In other words the claim has been enhanced by Rs. 18,64,527.83.

10. Mr. Gandhi has also made submission on the conduct of the Plaintiff in seeking to amend the Plaint and include additional claims nearly 15 months after the cause of action has arisen in his favour. Mr. Gandhi submits that the claims that have been introduced were known to the Plaintiff as far as back on 2nd December, 2021 itself but the Interim Application for amendment came to be filed only on 15th March, 2023, which was allowed on 11th April, 2023. Mr. Gandhi submits that the Plaintiff has itself delayed amending its own claim by a period of nearly one and a half years and it cannot be heard to say that the delay in filing additional written statement on behalf of the Defendant No. 2 should not be condoned, more so, when in the interregnum the Defendant No. 2 was diligently defending an Interim Application moved by the Plaintiff under Order XIII-A of the CPC.

11. As regards the period between 31st January, 2025 to 26th March, 2025 is concerned, Mr. Gandhi submits that it cannot be said that there is any delay for the said period as the issue of Rule 9 of Order VIII has been discussed before this Court during this period.

12. Mr. Gandhi submits that accordingly there is a sufficient cause made out explaining the delay in filing the Interim Application.

13. Mr. Gandhi has submitted that the Plaintiff in its reply has adopted a hyper technical approach regarding format of the Interim Application or its verification and the same cannot be given any weight.

14. Mr. Gandhi submits that his client is willing to be put to any terms that this Court may impose for allowing the Application.

15. On the other hand, Mr. Fernandes, learned Counsel for the Plaintiff reiterates the grounds taken in the reply. Mr. Fernandes submits that in view of the decision of the Hon'ble Supreme Court in the case of *SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited and Others*⁴ Rules 1 and 10 of Order VIII

4 (2019) 12 SCC 210

of the CPC are clearly mandatory and that the mandate cannot be circumvented as the Court has no power to extend the time to file additional written statement beyond 30 days as provided in Rule 9.

16. Mr. Fernandes further submits that even otherwise there is no sufficient cause for condoning the delay of 684 days and that if this Court in any circumstance is inclined to allow the Application, the same ought to be subject to costs.

17. I have heard the learned Counsel and considered their submissions.

18. Order VIII Rules 1, 9 and 10 of the CPC are usefully reproduced as under:-

***“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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

***9. Subsequent pleadings.--** No pleading subsequent to the written statement of a defendant other than by way of*

defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.

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.”

19. Before proceeding further it would be appropriate to consider the law thus far.

20. In the case of *SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited and Others (supra)* the Hon’ble Supreme Court had an opportunity to elucidate the statutory provisions that were introduced pursuant to the Commercial Courts Act, 2015 in Order VIII of the CPC. Paragraph 8 of the said decision quoted the following proviso, which was not only added to Order V but also to Order VIII Rule 1 of the CPC:

“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 the 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.”

21. The aforesaid proviso was re-emphasized by reinserting yet another proviso to Order VIII Rule 10 of the CPC as under:-

“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 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.”

(emphasis supplied)

22. The Hon’ble Supreme Court after analyzing the aforesaid provisions observed that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of further 90 days is granted, which the Court may employ for reasons to be recorded in writing on payment of such costs as it deems fit to allow such written

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

23. The Hon'ble Supreme Court observed in paragraph 16 that clearly the clear, definite and mandatory provisions of Order V read with Order VIII Rules 1 and 10 cannot be circumvented by recourse to the inherent powers under Section 151 of the CPC.

24. As can be seen that the provisos to Order VIII Rule 1 as well as to Order VIII Rule 10 restrict the powers of the Court to extend the time and also prohibit a written statement to be filed beyond the statutory period and also forfeit the right of the Defendant to have the written statement taken on record beyond the statutory period. These amendments in view of the application of the Commercial Courts Act, 2015 to commercial suits but not to ordinary suits. As far as the ordinary suits are concerned, the Hon'ble Supreme Court in the case of

Kailash Vs. Nanhku & Ors.⁵, while highlighting that ordinarily the time schedule prescribed in Order VIII Rule 1 has to be honoured and the Defendant should be vigilant, has observed that the provision is directory and not mandatory however the extension can be only by way of an exception and for reasons assigned by the Defendant and also recording reasons by the Court to its satisfaction. It has been spelt out that the departure from the time schedule prescribed by Order VIII Rule 1 of the CPC was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the Defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended. That although there is no straight jacket formula but the extension of time is to be only by way of an exception and not in a case of laxity or gross negligence. That the Court may impose costs for dual purpose: (i) to deter the Defendant from seeking any extension of time just for the asking and (ii) to compensate the Plaintiff for the delay and inconvenience caused to him. Obviously, the aforesaid principles would not come in handy as regards the filing of the written statement under Order VIII Rule 1 of the CPC as applicable to commercial suits.

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25. The restrictive proviso applicable to Order VIII Rule 1 or even the proviso applicable to Order VIII Rule 10 as can be seen does not find place as a proviso to Rule 9, which pertains to subsequent pleadings. The proviso to Rule 10 refers to Rule 1 but not to Rule 9.

26. No doubt the present Suit is a Commercial Admiralty Suit to which the Commercial Courts Act would apply and therefore the aforesaid restrictive proviso to Order VIII Rule 1 and the interpretation thereof by the Hon'ble Supreme Court would apply to filing of the written statement in the Suit. But what we are concerned with in the present application is filing of an additional written statement under Rule 9 of Order VIII. Rule 9 of Order VIII provides that no pleading subsequent to the written statement of the Defendant shall be presented except by the leave of the Court and upon such terms as the Court thinks fit and the Court may at any time require a written statement or additional written statement from any parties and fix a time of not more than 30 days for presenting the same. Therefore, ordinarily the time schedule prescribed in Order VIII Rule 9 is 30 days. Same was the case in the interpretation of Order VIII Rule 1 by the Hon'ble Supreme Court in the case of *Kailash Vs. Nanhku & Ors.* (*supra*). The language of Order VIII Rule 1 also gave 30 days for the

written statement and the proviso permitted extension of time by the Court beyond the 30 days period for reasons to be recorded in writing but with a direction that the period shall not be later than 90 days from the date of service of summons. That despite the said language, the Hon'ble Supreme Court in the case of *Kailash Vs. Nanhku & Ors. (supra)* observed that the proviso was directory and that in exceptional circumstances the time could be extended.

27. As noted above, the Commercial Courts Act, 2015 has only inserted the restrictive proviso to apply to Rule 1 but not to Rule 9. If the legislature had intended that the said restriction to be applicable to Rule 9 then the legislature would have said so. That is not the case here. I am of the view that the language in Rule 9 is directory and not mandatory. Until the legislature specifically provides for the same, in my view, in exceptional circumstances but not ordinarily, for reasons to be recorded in writing but not in a case of laxity or gross negligence and of course subject to costs which are deterrent to the Defendant and compensatory to the Plaintiff, the delay in filing the additional written statement can be condoned if a case of sufficient cause is made out. The discretion is to be exercised to the satisfaction of the Court. In short, the principles enunciated by the Hon'ble Supreme Court in the

case of *Kailash Vs. Nanhku & Ors.* for filing of a written statement in an ordinary suit would apply to filing of an additional written statement under Rule 9 of Order VIII even in the case of commercial suits.

28. Having observed as above, let us now consider whether the Defendant No. 2-Applicant has made out a case of sufficient cause in condoning the delay of 684 days.

29. By order dated 11th April, 2023, this Court had permitted the Defendants to file additional written statement to the amended Plaint within a period of three weeks from the date of service of the amended Plaint on the said Defendants. Interim Application (L) No.26315 of 2023 under Order XIII-A of the CPC seeking summary judgment was filed on 20th September, 2023. The said Application was heard on 18th September, 2024 and dismissed. The explanation given by the Defendant No. 2 for not filing the additional written statement in three weeks' time is that the said Defendant had trained all its energies in defending the said Interim Application and that it was due to the diligent defending by the Defendant No. 2 that the said Interim Application was rejected on 18th September, 2024. The Court had observed that the Suit cannot be decreed without oral evidence being

led. That thereafter the matter came up on 31st January, 2025, when the Defendant No. 2 sought time to file additional written statement. This fact is borne out from the record. On the 31st January, 2025, after it was pointed out to this Court that the additional written statement had not been filed in the time granted by this Court, upon a query from the Court as to whether there was any time limit for filing the additional written statement, Mr. Gandhi for the Applicant-Defendant No. 2 had fairly drawn this Court's attention to Order VIII Rule 9 of the CPC with respect to subsequent pleadings which limits the time for filing additional written statement to 30 days. However, Mr. Gandhi had sought some time to examine the case law, if any, available for the extension of this period. Mr. Fernandes, learned Counsel for the Plaintiff-Port Authority has opposed any request to file additional written statement and submitted that no application for the same setting out the reasons on the ground had been filed. The matter was then adjourned for Mr. Gandhi to examine case law.

30. On 7th March, 2025, when the matter was called out, Mr. Gandhi had submitted that this Court has discretion to extend the time and relied upon the proviso of Order VIII Rule 1 of the CPC in the context of the decisions of the cases of *Salem Advocate Bar Association*,

T. N. Vs. Union of India (supra), Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Ors. (supra) and Shobha w/o Wasudeo Tadas and Ors. Vs. Namdeo s/o Balaji Tadas and Ors. (Supra) Mr. Gandhi had further submitted that through inadvertence the written statement could not be filed within a period of three weeks and that since the Application for summary judgment had been rejected, this Court permit filing of an additional written statement to deny the additional claim made by the Plaintiff. However, since Mr. Fernandes for the Plaintiff had raised a grievance that no explanation was offered for the delay or for non filing of the written statement within the time granted, nor any application was made in that regard, Mr. Gandhi had sought time to file an application and this Court had directed filing of an appropriate application on behalf of the Defendant No. 2 and accordingly this Application came to be filed on 26th March, 2025.

31. In my view, therefore, the reason for the delay in not filing the additional written statement as per order dated 11th April, 2023 and in filing the application seeking extension of time to file the additional written statement has been sufficiently explained. The issues have still not been framed. The trial is yet to commence. These are exceptional circumstances in view of which the delay has occasioned for reasons

beyond the control of the Defendant No. 2. The claim of the Plaintiff in view of the amended Plaint as submitted has been enhanced from Rs. 1,48,00,642.18 to Rs. 1,66,65,170/- and if extension of time to file additional written statement is not granted, in my view, grave injustice would be caused. I agree with Mr. Gandhi that condonation of delay and permitting the Defendant No. 2 to file additional written statement to deal with the additional claim made by the Plaintiff would permit a holistic adjudication of the case. However, to deter the Defendant from seeking any extension of time just for the asking and to compensate the Plaintiff for the delay and inconvenience caused, I propose to impose costs of Rs. 1,00,000/-. It would, in view of the aforesaid, not be necessary to comment on the conduct of the Plaintiff with respect to the Application for amendment more so when the Application has been allowed by the Court after hearing the parties.

32. In view of the above discussion, subject to payment of costs of Rs. 1,00,000/- by the Applicant/Defendant No.2 to the Plaintiff, within a period of three weeks, let additional written statement be filed and served within a period of three weeks thereafter.

33. The Interim Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)