

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-COM-3-2024 (O&M)
Date of Decision: 10.12.2025

M/s Numerous Builders Private Limited & Ors. ...Appellants

Vs.

J.K. Lakshmi Cement Limited ...Respondent

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Abhinav Aggarwal, Advocate for the appellants.

Mr. Ankit Chowdhari, Advocate for the respondent.

ASHWANI KUMAR MISHRA, J. (Oral)

CM-5-FACOM-2024

Delay of 29 days in filing the appeal has been satisfactorily explained.

Accordingly, the application is allowed and delay of 29 days in filing the appeal is condoned.

FAO-COM-3-2024 (O&M)

1. This appeal assails the order passed by the Commercial Court, at Gurugram, dated 13.10.2023, whereby the concerned Court refused to take on record the written statement presented before the Court on behalf of the appellant (originally defendant) and strike off the defence of the appellant accordingly.

2. Undisputed facts of the case are that a recovery suit was instituted by the respondent before the Commercial Court on 17.10.2022.

Notice thereof was served upon the appellant on 29.04.2023. 24th May, 2023, was the date fixed for filing written statement. It transpires that written statement was prepared and notarized on 24.05.2023. However, the same could not be filed in the Court as the learned Judge of the regular Court was on leave and the Court to which the matter was referred, adjourned the proceedings to 29.07.2023, for the purposes already fixed.

3. On 29.07.2023, when the written statement was filed on behalf of the appellant, an objection came to be raised by the respondents with regard to entertain-ability of the written statement on the ground that such written statement was filed after 120 days and, therefore, the same could not be taken on record. This objection of the respondent has been accepted by the concerned Court vide order impugned. Thus, aggrieved by the order impugned, the appellant is before this Court.

4. Learned counsel for the appellant places reliance upon a judgment of the Hon'ble Supreme Court in **Prakash Corporates vs. Dee Vee Projects Limited**, Civil Appeal No.1318 of 2022, decided on 14.02.2022, to submit that in identical facts and circumstances, the Court did interfere in the matter and direct the written statement to be taken on record. Observations made by the Hon'ble Supreme Court in para 27 of the aforesaid judgment read as under:-

“27. For what has been discussed hereinabove, we are unable to approve the order dated 22.06.2021 as passed by the Trial Court and the order dated 09.07.2021 as passed by the High Court. In our view, the written statement already prepared and notarised by the defendant-appellant deserves to be taken on record and the Trial Court deserves to be directed to proceed with the matter in accordance with law thereafter; and for that

matter, to deal with the pending applications without further delay.”

5. Learned counsel for the respondent, however, submits that facts of the case are distinguishable and that the written statement was not filed within the period permitted in law. It is submitted that the maximum period permissible for the said purpose is ‘120’ days, whereas the written statement has been filed on 134th day. Learned counsel further submits that the judgment relied upon by the appellant was restricted to covid period and cannot be made applicable in the present context.

6. We have heard learned counsel for the parties and perused the materials on record.

7. It is not in dispute that on 29.04.2023, the appellant had entered appearance before the Court concerned, wherein, the following order was passed on 29.04.2023:-

“Report of Ahlmad perused. Notice issued to defendants received back served. Power of attorney has been filed on behalf of defendant No.1. Memo of appearance has been filed on behalf of defendants No.2 and 3.

List on 24.05.2023, for filing writte-statement on behalf of appearing defendants and for filing power of attorney on behalf of defendants No.2 and 3. Since today is the first date for issuance of notice, adjournment is allowed. “

8. On 24.05.2023, following order was passed by the Court concerned:-

“File put up before me being Link Magistrate as Ms. Mansi Gaur, ld. CJ(JD), Gurugram is on casual leave on 24.05.2023.

Today, the case was fixed for filing writte-statement on behalf of appearing defendants and for filing power of attorney on behalf of defendants No.2 and 3. However, due to heavy rush of work in the Court of undersigned and no urgency pleaded or request made by either the counsels/party/representative in this matter, matter at hand is adjourned to 92.07.2023, for the purpose already fixed. Ahlmad to comply. Interim order, if any shall continue till next date of hearing. File be sent to the concerned court immediately.”

9. Specific case of the appellant is that its written statement was ready on 24.05.2023 and was also notarized on the same date. As per the appellant, the case file was transferred on that day to a different Court and no business was transacted due to heavy load of work as such, the written statement, though prepared, could not be submitted in time.

10. It appears from order dated 24.05.2025 that due to heavy rush of work in the transferred Court, the proceedings were routinely adjourned to the next date. No business was transacted by the Court concerned on 24.05.2023 in respect of the present matter. In such circumstances, it cannot be said that there was any conscious default on the part of the appellant in not filing the written statement.

11. Merely because a period more than ‘120’ days had expired by the next date, would not be a ground to strike off the defence of the appellant, in the peculiar facts of the present case.

12. In that view of the matter, we are inclined to accept the appellant’s contention that the non-presentation of written statement, though prepared, was due to case being transferred to another Court where proceedings have routinely adjourned. Accordingly, we allow this appeal and set aside the order passed by the Commercial Court. The written statement filed by the appellant shall now be taken on record. We request the Court concerned to proceed in the matter with expedition and conclude the proceedings of suit without granting unnecessary adjournment to either of the parties.

13. All pending misc. application(s), if any, also stand disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

10.12.2025
rajesh

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |