IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13684 OF 2026

Sanjivani Industries
A Proprietorship firm, having
its registered office at A-676,
TTC Industrial Area, Khairane MIDC
Navi Mumbai – 400 709. ...PETITIONER

VERSUS

1. AC Shaikh Contractor
A partnership firm and having
its registered office at ACS Towers,
Opp Jilha Parishad Office,
Near ST Stand, Maliwada,
Ahmednagar, Maharashtra – 414001.

2. Mr. Asir Channubhai Shaikh, Partner
ACS Tower, Opp. Jilha Parishad Office,
Near ST Stand, Maliwada, Ahmednagar,
Maharashtra – 414001.
Also at : Gulshan Bungalow, Burudgaon
Road, Ahmednagar – 414006.

3. Mr. Altaf Asir Shaikh, Partner
ACS Tower, Opp Jilha Parishad Office,
Near ST Stand, Maliwada, Ahmendagar,
Maharashtra – 414001.
Also at : Gulshan Bungalow, Burudgaon
Road, Ahmednagar – 414006. ...RESPONDENTS

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Advocate for the Petitioner : Mr. Sahil Memmon (Link Legal) a/w Rohit R. Dhongde
Advocate for the Respondent No. 1 : Mr. Sanket N. Nuryawanshi

...

CORAM : MANJUSHA DESHPANDE, J.

Reserved on : 28.10.2026
Pronounced on : 03.11.2026

JUDGMENT : -

1. Rule. Rule returnable forthwith. With the consent of the parties, heard finally at the admission stage.

2. The petitioner in this Writ Petition assails the order passed by the 8th District Judge, and Additional Sessions Judge, Ahmednagar, (hereinafter referred to as the "trial Court") in Commercial Suit No. 1 of 2026, dated 03.08.2026.

3. The learned Advocate Mr. Memmon, appearing for the petitioner submits that, the petitioner has instituted a Commercial Suit No. 1 of 2026 (for short "the suit"), which is pending before the trial Court The summons in the suit were issued on 13.01.2026, which were served on the respondents on 03.02.2026. On receiving summons, it was incumbent upon the respondents to cause their appearance and file the Written Statement within a period of 30 days from receiving the summons. It is submitted that, as per Order VIII Rule 1 of the Code of Civil Procedure, which is applicable to the Commercial disputes, the outer limit for filing the Written Statement is 120 days. Since the respondents have been served with suit summons, as per the Bailiff

report on 03.02.2026, the limitation for filing the Written Statement would begin from 03.02.2026. The outer limit of 120 days from 03.02.2026 would end on 03.06.2026. In the present case, the respondents have failed to file their Written Statement within the statutory limit, as prescribed in Order VIII Rule 1 of the CPC. Since the outer limit for filing the Written Statement was over, the petitioner has filed an application for passing No WS order against the respondents on 24.04.2026. On filing of such application, it is submitted that, the respondents have submitted an application seeking adjournment for filing the Written Statement. It is further submitted that, thereafter, the matter was listed on 16.06.2026. It is submitted that only on 02.07.2026 the Written Statement has been filed by the respondents, after which the next date for hearing was 03.08.2026. When the matter was listed on 03.08.2026, the order impugned has been passed, by holding that since the Written Statement is filed, the application for passing of No WS is rejected. It is submitted that, the Written Statement is filed beyond the prescribed period of limitation, as contemplated under Order VIII Rule 1 of the CPC. He submits that, so far as, the commercial disputes are concerned, the provisions for filing the Written Statement are applied rigorously and no relaxation is contemplated for granting time for filing the Written Statement. The outer limit is of 120 days for filing of the Written Statement, which is required to be followed scrupulously. In support of his submission the learned Advocate for the petitioner relied upon the decisions of the Hon'ble Supreme Court in **M/S SCG Contracts India Pvt. Ltd. vs Ks Chamankar Infrastructure Pvt. Ltd. - AIR 2019**

SUPREME COURT 2691, wherein, the Hon'ble Supreme Court has considered the scope of the order VIII Rule 1 of CPC and its applicability to the Commercial Suits. The Hon'ble Supreme Court has taken a view that, there cannot be any extension of further time for filing of the Written Statement beyond 120 days and failure to file such Written Statement would result in forfeiting the right to file Written Statement for the respondents.

4. Thus, according to him, the law in this regard is settled by the Hon'ble Supreme Court, in view of the decision in **M/S SCG Contracts India Pvt. Ltd.** (supra). He also relied on the decision of this Court in **Chief Officer, Shrigonda Municipal Council v. The State of Maharashtra and Ors. – Writ Petition No. 7677 of 2020, dated 10.12.2020**, wherein, this Court referring to the decision of **M/S SCG Contracts India Pvt. Ltd.** (supra) held that, in context with the mandatory provisions under Order VIII Rule 1 of CPC, and its application to the Commercial Suits has taken a view that, there is no discretion is left with the Court to allow the application for extension of time to file the Written Statement, if such Written Statement is not filed within the statutory period. The learned Advocate for the petitioner, therefore, submits that the case of the petitioner is fairly straight forward, which needs to be allowed by setting aside un-reasoned order passed by the trial Court.

5. The learned Advocate Mr. Sanket Surwanshi, appearing for

the respondents has opposed the Writ Petition, contending that the time limit as prescribed under Order VIII Rule 1 of CPC would only begin from the date on which a complete copy of the plaint is served on him. It is submitted that, admittedly, the respondents were served with suit summons on 03.02.2026, but summons were not accompanied with the copy of the plaint and related documents, therefore, the respondents were not in a position to file their Written Statement. According to him, in fact, it was titled as 'notice to show cause', under the Appendex – H. This notice was served by respondent No. 1 -Firm calling upon to appear on 13.03.2026. He submits that no separate summons were ever issued against the answering respondent Nos. 2 and 3. He submits that, although he was not served with a copy of plaint/suit, he has still diligently appeared through his Advocate, on the first day after issuing summons on 13.03.2026. Since the presiding Officer was on leave, the next date was granted 24.04.2026. An application has filed by the respondents seeking extension of time, for filing of the Written Statement and that application has remained pending, owing to the transfer of the matter between the Courts and the intervening Summer Vacation, for which the respondents cannot be held responsible. It is submitted that on 16.06.2026, on the very first date after the Summer Vacation, the Judge of the trial Court has granted time to file written statement by way of last chance. On 23.06.2026, the respondents were ready with the Written Statement, as well as the Counter Claim, but due to the leave of the Presiding Officer, the matter was adjourned and the Written Statement as well as the Counter Claim were taken on record on

02.07.2026. It is thus, submitted that although the respondents have timely taken steps to ensure compliance under Order VIII Rule 1 of CPC, but due to unavoidable circumstances as set out here-in-above, the Written Statement was filed on 02.07.2026, which is well within the outer limit of 120 days counting it from the date of obtaining a copy of plaint from the petitioner. He submitted that in fact, the Counter Claim, as well as the Written Statement were taken on record by order dated 02.07.2026, which has not been challenged by the petitioner at any point of time. The petitioner is merely challenging the order dated 03.08.2026, by which the petitioner's application at Exhibit-14 for passing of 'No WS' order has been rejected, holding it to be infructuous.

6. In fact, according to him, the day on which the Written Statement and Counter Claim were taken on record, a copy was also furnished to the learned Advocate for the petitioner on the same day. He submitted that on 16.06.2026, the trial Court has allowed the respondent's application seeking time to file say as a last chance.

7. Thus, the Court has permitted the respondents to file the Written Statement after outer limit for filing the Written Statement, which has expired on 03.06.2026. He submitted that, considering the peculiar circumstances, the time has been extended by the District Judge, Ahmednagar, to file Written Statement, which is very much permissible, since the respondents were not served with the copy of the plaint, therefore, they were not in a position to file their Written

Statement within the outer limit as provided under Order VIII Rule 1 of the CPC. In support of his submission, he would rely upon the decision of this Court in **IK Marine Agencies Pvt Ltd v. Tata Steel Ltd (Writ Petition No. 3514 of 2026), decided vide order dated 28 April, 2026**, wherein this Court has taken a view that, since the postal receipt indicates that the Article contained therein weighed only 110 gms., and the defendant No. 2 claimed that it had not received the copy of the plaint and its accompaniment till 29.08.2024. In the application filed seeking extension of time on 26.09.2024, the defendant No. 2 contended that it had received all the annexures alongwith the plaint only on the last date i.e. on 29.08.2024, in such circumstances, when the issue is about strict time limit for filing the Written Statement, it is imperative that the summons should be served on the defendants, along with copy of plaint and its accompaniment, so as to facilitate the defendants to file their Written Statement, within time frame.

8. In view of aforementioned judicial pronouncements, according to the learned Advocate for the respondents, in his case also the summons were not accompanied with the plaint hence, they were unable to file their Written Statement by adhering to the time limit prescribed under law and taking into consideration the aforesaid fact, the District Judge thought fit to extend the time to file Written Statement. The defendants have filed the Written Statement within the extended period, hence, there is no merit in the challenge raised by the petitioner and the Writ Petition deserves to be dismissed.

9. I have heard the learned Advocates for respective parties and perused the documents that are placed on record along with the supporting judgments.

10. The petitioner is raising challenge to the order dated 03.08.2026, passed by the trial Court, thereby, rejecting his application with a prayer to pass 'No WS' order, against the respondents, since the respondents had failed to file their Written Statement within 120 days, from the date of service of summons/notice. An application was filed by the petitioner on 24.04.2026 and the order thereon has been passed on 03.08.2026. The impugned order has been challenged by the petitioner on the ground that, it is a cryptic order and not supported by any reasons. The other grounds of challenge raised by the petitioner are that, according to Order VIII Rule 1 of the CPC, the defendants are required to file the Written Statement within a period of 30 days from the service of summons. This period of 30 days can be extended further for a period of 90 days, from the date of service of summons, by recording reasons by the concerned Court. So far as a Commercial Dispute is concerned, this provision has undergone the amendment and the amended proviso to the Order VIII Rule 1 reads thus :

> *"(i) in Rule 1 the existing proviso shall be substituted by the following proviso:*
> *"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. 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."

11. This proviso clearly mandates that the Written Statement shall not be allowed later than 120 days from the date of service of summons, and on expiry of 120 days from the date of service of summons, the defendants forfeit their right to file the Written Statement and the Court shall not allow the Written Statement to be taken on record.

12. In **M/S SCG Contracts India Pvt. Ltd. vs Ks Chamankar Infrastructure Pvt. Ltd.** (supra), the Hon'ble Supreme Court while pronouncing upon the enforceability of the aforementioned provision, has made following observations in paragraph No. 8, which reads thus :

"8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 3.10.2015 bringing in their wake certain amendments to the ode of Civil Procedure. In Order V, Rule 1, sub-rule (1) or the second proviso, the following proviso was substituted:

"Provided further 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 days, as may to be be specified by the Court, for

reasons 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 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."

Equally, in order VIII Rule 1, a new proviso was substituted as follows :

"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 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."

This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under: -

"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 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."

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact 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 further power to extend the time beyond this period of 120 days."

13. Now it is settled position that there can be no relaxation of the outer limit prescribed in filing of the Written Statement. In the subsequent order passed by the Hon'ble Supreme Court, the Apex Court has taken a view in case of **National Insurance Company Ltd. v. M/s National Building Construction India Ltd. & Ors. (Special Leave to Appeal (Civil) No. 5383 of 2020, dated 12.09.2023), (2023 LiveLaw (SC) 800,** that the service contemplated in terms of Order V Rule 2 of the Code would imply service summons along with a copy of plaint.

14. The issue in aforementioned decision was about the computation of starting point of limitation for filing of the Written Statement in a suit instituted in Original Side of the Bombay High Court in Commercial Division.

15. In the present case, although, it is claimed by the petitioner that, the suit summons has been served on respondents on 03.02.2026 itself. It is the case of the respondents that the single page which was titled as writ of summons was served on the respondents on 03.02.2026, which was not accompanied by the plaint or its accompaniments. It was titled as 'notice to show cause (General Form)', under (Appendix – H), No. 4 bears only the name of the answering respondent No. 1 – Firm, calling upon it to appear on 13.03.2026. No summons has been issued on the answering respondents to appear and answer the claim and file the Written Statement within 30 days. On the aforementioned background of the facts, according to respondents, the period for filing the Written Statement under Order VIII Rule 1 of the CPC, did not commence from 03.02.2026. The submission of the respondents that, the copy of the plaint was received only on 13.03.2026, has not been controverted by the petitioner. It is stated that, on 13.03.2026, the respondents have caused their appearance through Advocate, as per the returnable date stated in the summons. Though the respondents have marked their appearance in the Roznama, due to unavailability of the Presiding Officer, the proceedings were not taken up on 13.03.2026. The next date assigned was 24.04.2026, which was again before a different Court, after the

transfer of the matter. On 24.04.2026, the respondents have filed an application seeking time to file their say. On the very day, the petitioner has also filed an application at Exhibit – 14, seeking a 'No Written Statement' order. Both the applications were kept pending and the matter was adjourned on 16.06.2026, for filing of the Written Statement and Say. It is submitted by the learned Advocate for the respondents that, the 120th day is computed by the petitioner, which fall during the Summer Vacation on 03.06.2026, when the Court was closed and the application filed by the respondents seeking time to file Written Statement was still pending.

16. It is submitted that, meanwhile again the matter was transferred to the Principal District Judge, Ahmednagar on 05.06.2026 and thereafter, the matter was listed on 16.06.2026. An application has been filed by the respondents seeking time to file their say at Exhibit – 15, the time was granted by the learned District Judge by way of a last chance. This order granting extension of time by way of a last chance was never challenged by the petitioner. The Written Statement and the Counter Claim of the petitioner both were filed on 23.06.2026, however, since the Presiding Officer was on leave, the matter was adjourned on 02.07.2026. After filing of the Written Statement on 23.06.2026, the petitioner has not raised any objection for taking the Written Statement of the respondents on record. It is only when the application for 'No WS' was rejected by the learned District Judge, the petitioner has challenged the said order. On the aforementioned background, in view of the

chronology of the dates & events that have occurred till filing of the Written Statement, it is evident that, the period of limitation for filing of the Written Statement cannot be counted from the day on which the summons were served on 03.02.2026 but it will have to be counted from the day on which the respondents claimed to have received the copy of plaint along with the accompanying documents on 13.03.2026. Since the respondents were not in possession of the copy of plaint, as well as the accompanying documents to oppose the prayer and averments made in the plaint, therefore, there cannot be any compliance of the Order VIII Rule 1 of the CPC. Since the summons received by the respondents was not accompanied with the plaint and necessary documents, so as to take further steps within the period of limitation, as provided in Order VIII Rule 1 of CPC. In this regard, a profitable reference can be made to the observations made by this Court, **in interim application No. 425 of 2019, in a Commercial Suit No. 765 of 2019, in Atlanta Limited vs Metso (India) Private Limited, decided on 3rd and 4th August, 2021**, the relevant portion of the order is reproduced hereunder, which reads thus:

> *"24. In this Interim Application, both sides seem to have proceeded on the basis that the writ of summons was in fact properly issued as required by law. If it was not, then there is a very serious issue under the CCA. The reason is that there is an absolute bar of 120 days that runs against any defendant; and it runs from the date of service of the writ of summons. This is what creates an anomaly. What is to happen, for instance, if the plaintiff does*

not supply a copy of the plaint within a reasonable period of time? In a given situation, the plaintiff may be left with no time at all to file a written statement. Let us take an extreme example at the outer limit of limitation under the CCA, the period of 120 days from the date of service of the writ of summons. Let us next assume that the defendant seeks a copy of the plaint within two days of being served with this writ of summons (unaccompanied by the copy of the plaint). But the plaintiff does not furnish a copy of the plaint till the 119th day from the date of service of the writ of summons, or, even worse, furnishes it on the 125th day after date of service of the writ of summons. The defendant is deprived of any reasonable opportunity to enter a written statement for no fault of his own.

25. This is indeed not the purport or ambit of the CCA at all. That Act seeks to fast-track the disposal of commercial suits. But that cannot come at the cost of equity and justice, including procedural fairness. No statute can be read like this. It is, therefore, impossible to accept the argument that time against the defendant for filing the written statement runs from the date of a bare-bones writ of summons without a copy of the plaint; and that it makes no difference when the plaintiff sends him a copy for no law or rule fixes any time within which the plaintiff must furnish a copy. The other side result in an equal absurdity, for no time is fixed either within which the defendant must seek a copy of the plaint from the plaintiff or his advocate. No statute can be read to lead to a self-annihilating or self-destructive or self-

contradictory manner.8 It is plainly the duty of a court to construe a statute not literally but to give effect to its meaning and intent, and to avoid any interpretation that yields an absurdity. A construction that defeats the statute's objective must be rejected.9

26. The consequence is inevitable. The writ of summons was wrongly issued. There is no valid service of the writ of summons at all. All that Metso can be said to have received is notice of institution of the suit. It was never served with the writ of summons properly so called. A non-conforming writ of summons is no writ of summons at all and service of a non-conforming writ of summons is no service at all. Technically speaking, therefore, no question of limitation in this case runs against the Defendant. And there is also no question of assessing any delay or the grounds for delay."

17. This Court has taken a view that when there is no valid service to Writ of summons, it is not good service at all, therefore, there will be no question of limitation in such circumstances.

18. In one more decision of this Court in **IK Marine Agencies Pvt Ltd Vs. Tata Steel Ltd - in Writ Petition No. 3514 of 2026 vide order dated 28.04.2026,** this Court has made following observations in paragraph No. 30, which reads as thus :

"30. When the Defendant is sought to be bound by the strict timeline to file the written statement, it is imperative that the writ of summons be served on the Defendant along with the plaint and its accompaniments so as to

facilitate the Defendant to file the written statement within the time frame. If the Defendant is not equipped to ascertain the case he is to meet, mere service of summons sans the plaint and its accompaniments would not constitute compliance of the statutory mandate so as to make the time to file written statement run qua the defendant. Service of summons, without a copy of the plaint and its accompaniments, would not constitute a valid service in the eye of law, especially in a case where the failure to file the written statement within the outer limit of 120 days entails the grave consequence of forfeiture of right to defend the suit."

19. In the aforementioned decision it is observed by this Court that the service of summons without a copy of the plaint would not constitute a valid service in the eyes of law, especially in case where the failure to file the Written Statement results in grave consequences. Thus, in the aforementioned decision of this Court, as well the Hon'ble Supreme Court, it is evident that, if all the procedural requirements while issuing summons are complied with, only in such case the time line of outer limit of 120 days, can be adhered for filing of the Written Statement. The defendants cannot be put to disadvantage when the plaintiff himself has not taken appropriate steps for effecting the valid service.

20. In the present case, a copy of the plaint was received by the respondents on 13.03.2026, therefore, the period of limitation for filing the Written Statement would commence from 13.03.2026. The

respondents have filed Written Statement on 23.06.2026, which is within the period of 120 days, if counted from the date of receiving the copy of the plaint by the respondents. In view thereof, no case is made out by the petitioner for causing interference in the order passed by the 8th District Judge, Ahmednagar.

21. In the result the Writ petition is dismissed.

22. The rule is discharged.

(MANJUSHA DESHPANDE, J.)

Mahajansb/