Reserved on : 07.09.2026
Pronounced on : 03.11.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 8273 OF 2026 (GM-CPC)

BETWEEN:

1. YAAHVI VENTURES
A PARTNERSHIP FIRM INCOROPORATED
UNDER THE PARTNERSHIP, ACT 1932,
HAVING ITS OFFICE AT NO.371,
2ND FLOOR, TADIMALLAS,
13TH MAIN ROAD, RMV EXTENSION
BENGALURU-560080
REP BY ITS PARTNER
SRI. VASUDEVAMURTHY. N.

2. SRI. VASUDEVAMURTHY. N.,
PARTNER, YAAHVI VENTURES
S/O. LATE N.NARAYANAPPA
AGED ABOUT 64 YEARS.

3. SRI. V. NEHAL
PARTNER, YAAHVI VENTURES
S/O. SRI. VASUDEVAMURTHY. N
AGED ABOUT 29 YEARS.

4. SMT. PADMAVATHI. K
PARTNER, YAAHVI VENTURES
S/O. SRI. VASUDEVAMURTHY. N
AGED ABOUT 57 YEARS

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

PETITIONER Nos. 2-3 ARE
R/AT NO. 371, 2ND FLOOR,
TADIMALLAS, 13TH MAIN ROAD,
RMV EXTENSION,
BENGALURU-560080.

…PETITIONERS

(BY SRI SUNIL S. RAO, ADVOCATE FOR
SRI T. SESHAGIRI RAO, ADVOCATE)

AND:

1. SRI M L PRAKASH RAO,
AGED ABOUT, 48 YEARS,
R/AT NO. 35, SRIKANTAN LAYOUT
HIGH GROUNDS,
BANGALORE, 560001.

…RESPONDENT

(BY SMT. ASHWINI PATIL, ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO MODIFYING THE IMPUGNED ORDER DATED 08.12.2025 PASSED IN IA NO. 3 IN COM. OS NO. 152/2025 FOUND AT ANNEXURE-A TO THE WP AND PERMIT THE PETITIONER HEREIN TO PLACE THE WRITTEN STATEMENT ON BOARD BEFORE THE LXXXIX ADDL. CITY CIVIL AND SESSIONS JUDGE BENGALURU (CCH-90) (COMMERCIAL COURT BANGALORE) IN COM OS NO. 152/2025.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. ORDER

Heard Sri Sunil S. Rao, learned counsel appearing on behalf of Sri T. Seshagiri Rao, learned counsel for the petitioners, and Smt. Ashwini Patil, learned counsel appearing for the caveator/respondent.

2. The petitioners are before this Court calling in question the order dated 08.12.2025 passed by the LXXXIX Additional City Civil and Sessions Judge, Bengaluru (hereinafter referred to as the 'Commercial Court' for short), in Commercial O.S. No.152 of 2025, whereby the application filed by the petitioners under Order IX Rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for short), seeking setting aside of the *ex parte* order dated 18.09.2025 came to be allowed. However, the petitioners were denied the right to file their written statement.

3. The facts in brief are that:

3.1 Petitioner No.1 is a partnership firm and petitioner Nos.2 to 4 are its partners. Respondent–plaintiff instituted a Commercial suit in Commercial O.S. No.152 of 2025 before the

Commercial Court seeking a decree directing the defendants to pay a sum of Rs.8,72,139/- towards arrears of rent, along with interest at the rate of 18% per annum. The suit came to be instituted on 31.01.2025.

3.2 The Commercial Court, on 01.02.2025, directed issuance of suit summons and emergent notice to defendant Nos.1 to 4 through Court process, Registered Post Acknowledgment Due (RPAD) and e-mail, subject to steps being taken. Subsequently, on 22.03.2025, the Commercial Court again directed issuance of suit summons to defendant Nos.1 to 4 through Court process, RPAD and e-mail. On 22.04.2025, the Commercial Court once again directed issuance of suit summons to defendant Nos.1 to 4 through the aforesaid modes. However, the office note recorded in the order sheet on the said date indicates that the RPAD cover was returned with an endorsement of "not claimed", as the premises of the defendants were found locked.

3.3 Thereafter, on 13.06.2025, the Commercial Court directed issuance of suit summons to defendant Nos.1 to 4 by hand and through the learned counsel appearing for the defendants in Criminal Appeal Nos.1558 of 2024 and 1559 of

2024. On 15.07.2025, the Commercial Court once again directed issuance of suit summons to defendant Nos.1 to 4 through RPAD, as the learned counsel appearing for the defendants in the aforesaid criminal appeals had refused to receive the summons.

3.4 On 18.08.2025, the plaintiff filed an application under Order V Rule 20 of the CPC seeking issuance of summons by way of substituted service through affixture. The Commercial Court, taking note of the fact that the summons issued to defendant Nos.1 to 4 at their last known address had been returned unserved with an endorsement of "not claimed", and that the learned counsel appearing for the defendants in Criminal Appeal Nos.1558 of 2024 and 1559 of 2024 had refused to receive the summons, observed that defendant Nos.1 to 4 were willfully keeping themselves away from the process of the Court. Accordingly, the Commercial Court directed issuance of suit summons to defendant Nos.1 to 4 by way of substituted service through affixture on a conspicuous part of their last known address, through Court process. The matter was thereafter posted to 18.09.2025.

3.5 On 18.09.2025, the Commercial Court, noticing the absence of defendant Nos.1 to 4, held the service of summons to be sufficient and placed the said defendants *ex parte*. Subsequently, on 16.10.2025, the learned counsel appearing for defendant Nos.1 to 4 entered appearance before the Commercial Court and filed I.A. No.3 under Order IX Rule 7 of the CPC, seeking setting aside of the *ex parte* order dated 18.09.2025 passed against them.

3.6 The Commercial Court, by its order dated 08.12.2025, allowed the application filed under Order IX Rule 7 of the CPC, subject to payment of costs of Rs.10,000/-, and set aside the *ex parte* order passed against defendant Nos.1 to 4. However, the Commercial Court, taking note of the fact that the summons issued to the defendants through RPAD pursuant to the order dated 22.04.2025 had been returned with an endorsement of "not claimed", held that the period of 120 days prescribed for filing the written statement had already elapsed on 21.08.2025. Consequently, notwithstanding the setting aside of the *ex parte* order, the Commercial Court declined to permit defendant Nos.1 to 4 to file their written statement.

4. Learned counsel appearing for the petitioners submits that there has been no service of suit summons on the petitioners from the date of its initial issuance. It is only upon service of summons by way of substituted service through affixture that the petitioners became aware of the institution of the suit and the proceedings therein.

4.1 It is contended that, since the Commercial Court, on 18.09.2025, held the service of summons to be sufficient and placed the petitioners *ex parte*, the said date ought to have been reckoned as the date of service of suit summons for the purpose of computing the period prescribed for filing the written statement. However, the Commercial Court has erroneously proceeded on the premise that the suit summons stood served on 22.04.2025, merely because the RPAD cover was returned with an endorsement of "not claimed".

4.2 Learned counsel would further submit that, upon the appearance of the defendants before the Commercial Court on 16.10.2025, the Commercial Court directed the plaintiff to furnish copies of the plaint along with the documents to the defendants.

4.3 It is contended that, notwithstanding such a direction, copies of the plaint and the accompanying documents came to be furnished to the defendants only on 11.11.2025, with a view to ensuring that the period prescribed under Order VIII Rule 1 of the CPC for filing the written statement would elapse. It is, therefore, submitted that the Commercial Court has erred in denying the petitioners an opportunity to file their written statement, despite having allowed the application filed under Order IX Rule 7 of the CPC and set aside the *ex parte* order.

4.4 In support of the submissions, learned counsel relied upon the judgment of the Bombay High Court in ***Atlanta Limited v. Metso India Private Limited***[1].

5. *Per contra*, learned counsel appearing for the respondent would submit that the suit summons issued through RPAD had been returned with an endorsement of "not claimed" on more than one occasion, which is demonstrative of the mala fide intention of the defendants to evade service of summons.

5.1 It is further submitted that, in view of the persistent and deliberate evasion of service by the defendants, the plaintiff

[1] ***AIR 2021 Bombay 300***

was constrained to file an application seeking issuance of summons by way of substituted service through affixture.

5.2 Learned counsel would contend that the return of suit summons with an endorsement of "not claimed" ought to be construed as a refusal to receive summons and, consequently, the period prescribed for filing the written statement would commence from the date of such refusal. It is, therefore, submitted that the Commercial Court was justified in declining to permit the defendants to file their written statement upon expiry of the statutory period of 120 days.

5.3 In support of the submission, learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Ajeet Seeds Ltd. v. K. Gopala Krishnaiah***[2].

6. Considered the Submissions made by the learned counsel for the respective parties and perused the material on record.

7. The present suit is a commercial suit. In view of the judgment of the Hon'ble Supreme Court in ***SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P)***

[2] ***(2014) 12 SCC 685***

Ltd.,[3] , in Commercial Suits under the Commercial Courts Act, 2013, the right to file the written statement stands forfeited upon expiry of 120 days from the date of service of summons, and the Court shall not permit the written statement to be taken on record thereafter. The relevant paragraphs of the judgment read as under:

> *"…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 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days."*

8. The Commercial Court, on various dates, directed issuance of suit summons to the defendants. However, the office note recorded in the order sheet dated 22.04.2025 indicates that the RPAD covers addressed to defendant Nos.1 to 4 were returned with an endorsement of "not claimed", with a further indication that the premises of the defendants were

[3] ***(2019) 12 SCC 210***

found locked. Taking note of the aforesaid circumstances and observing that the defendants were wilfully keeping themselves away from the process of the Court, the Commercial Court, by its order dated 18.08.2025, directed issuance of suit summons by way of substituted service through affixture. Subsequently, on 18.09.2025, the Commercial Court, noticing the absence of the defendants, held the service of summons to be sufficient and placed defendant Nos.1 to 4 *ex parte*.

9. The Commercial Court, in the order impugned, has denied the defendants the right to file their written statement on the premise that the suit summons issued through RPAD pursuant to the order dated 22.04.2025 had been returned with the postal endorsement of "not claimed". Treating the said endorsement as constituting sufficient service of summons, the Commercial Court proceeded to reckon the period of 120 days prescribed for filing the written statement from the said date and consequently held that the right of the defendants to file their written statement stood forfeited upon expiry of the prescribed period.

10. The question that arises for consideration is whether the return of suit summons with a postal endorsement of "not

claimed" could, by itself, be construed as sufficient service so as to trigger the commencement of the statutory period of 120 days prescribed for filing the written statement. The Bombay High Court in ***The New India Assurance Company Limited v. Nasibunnisa Mohammed Israr Khan and Others***[4], has held that when summons are returned with postal endorsements such as "intimation posted and unclaimed" or "not claimed", the same cannot be accepted as constituting valid service of summons. The relevant paragraphs read as under:

> *1. The issue which arises for consideration is "whether a notice issued by the Court by Registered Post acknowledgment duewhich is returned back with the remarks of the Postman "intimationposted" and "unclaimed" or "not claimed" can be taken as good aservice ?" Since, the issue arises in many matters, I requested Mr.Sathaye, learned counselto assist the Court.Accordingly, thelearned counsel appearing for the Applicant and Mr.Sathaye, AmicusCuriae, have made detailed submissions.*
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> *Xxxxx*
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> *14. As pointed out earlier, when summons or notice is issued by Registered Post A.D. by invoking Rule 9 of Order V, there is no specific provision either in the said Code or in the Appellate Side Rules which deals with the contingency where*

[4] ***Civil Application No. 1979 of 2011 in First Appeal (Stamp) No. 13185 of 2011, decided on 14 October 2011***

the postal article containing the summons or notice is returned with remark "intimation posted" and "unclaimed" or "not claimed". The SubRule (5) of the Rule 9 of Order V which provides that in certain cases the Court Shall declare that the summons has been duly served significantly does not cover a case where the summons or notice issued by Registered Post A.D. is returned with remark "intimation posted" and "unclaimed" or "not claimed". Now the question is whether in such a case the presumption under Section 27 of the General Clauses Act or Section 114 of the Evidence Act can be invoked. Such presumption is held to be a rebuttable presumption. Essentially a presumption is a rule of evidence and the question of invoking presumption arises only after parties adduce evidence. The presumption under both the sections is a rebuttable presumption. The presumption is a rule of evidence which can be applied only after the parties adduce evidence inasmuch as only at that stage, there is an opportunity to rebut the presumption. When it comes to service of summons or notice as required by the said Code, at the stage of service of summons or notice, the Court cannot invoke the presumption either under Section 27 of the General Clauses Act or under Section 114 of the Evidence Act and hold that the service effected in such manner is a good service. The decisions which hold such service as "good service" are rendered in relation to the service of statutory notice by the landlord to the tenant or notices exchanged between the parties. In these cases, such presumption was invoked after the parties adduced evidence. Therefore, whensummons or notice of the Court issued by Registered Post A.D. is returned with a remark "intimation posted" and "not claimed" or "unclaimed", the same cannot be accepted as a good service. The reason is that at that stage there is no scope to invoke the rebuttable presumption. As pointed out earlier, apart from the fact that the presumption as aforesaid is a rule of evidence, even assuming that there is a proper

> *service of an intimation, the postal authorities do not keep the postal articlesin the post office for more than few days and the same are returned to the sender. In case of the Defendant who is away for more than few days, even if he visits the post office for collecting the postal article, he will not get the postal article if it is already returned. It is pertinent to note that while substituting the Rule 9 of Order V of the said Code, though the legislature has expressly provided that if a postal article containing the summons is received back with an endorsement of refusal, the same shall be treated as good service, there is no such provision made in a case where summons or notice issued by Registered Post A.D. is returned with a remark "intimation posted" and "not claimed" or "unclaimed". Therefore, in such a case, the service of summons or Court notice cannot be treated as a good service. The settled law of invoking presumption of service of notice by landlord to the tenant will not apply to service of summons or notice.*

11. The Commercial Court, in the order impugned, has observed that the plaintiff, by way of abundant caution, sought issuance of summons through substituted service by way of affixture under Order V Rule 20 of the CPC. Such a finding of the Commercial Court cannot be countenanced, particularly when the Commercial Court itself had directed substituted service of summons and subsequently held the service to be sufficient only on 18.09.2025. Once the Commercial Court, by its order dated 18.09.2025, recorded that service of summons was sufficient, it could not have simultaneously proceeded on the premise that the postal endorsement of "not claimed"

recorded pursuant to the order dated 22.04.2025 constituted sufficient service for the purpose of reckoning the statutory period of 120 days. The Commercial Court, therefore, fell into error in treating the said postal endorsement as the starting point for computing the period prescribed for filing the written statement.

12. Learned counsel appearing for the respondent has placed strong reliance on the judgment of the Hon'ble Supreme Court in ***Ajeet Seeds Ltd. v. K. Gopala Krishnaiah***[5]***,*** to contend that where a notice is dispatched to the correct address of the addressee, a presumption of due service arises by virtue of Section 114 of the Indian Evidence Act, 1872, read with Section 27 of the General Clauses Act, 1897. However, the said judgment was rendered in the context of service of a statutory demand notice contemplated under Section 138 of the Negotiable Instruments Act, 1881, and not in relation to service of suit summons governed by the provisions of Order V of the CPC. The question of service of suit summons under Order V of the CPC stands on a distinct statutory footing and is governed by the procedure prescribed thereunder. Therefore, the

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[5] ***(2014) 12 SCC 685***

aforesaid judgment, rendered in the context of a statutory notice under the Negotiable Instruments Act, cannot be mechanically applied to the facts of the present case to conclude that the suit summons stood duly served merely because the postal cover was returned with an endorsement of "not claimed". The reliance placed by the learned counsel for the respondent on the aforesaid judgment, therefore, does not advance the case of the respondent.

13. The next question that falls for consideration is as to the date from which the period prescribed for filing the written statement ought to be reckoned in the facts and circumstances of the present case. To answer the said question, it becomes necessary to advert to the object and purpose underlying the service of suit summons. The Hon'ble Supreme Court, in ***Auto Cars v. Trimurti Cargo Movers (P) Ltd.,***[6], while elucidating the object of service of summons, has held in paragraph 26 as follows:

> *"26. The object behind sending the summons is essentially threefold— first, it is to apprise the defendant about the filing of a case by the plaintiff against him; second, to serve the*

[6] ***(2018) 15 SCC 166***

> *defendant with the copy of the plaint filed against him; and third, to inform the defendant about actual day, date, year, time and the particular court so that he is able to appear in the court on the date fixed for his/her appearance in the said case and answer the suit either personally or through his lawyer."*

14. A perusal of the aforesaid judgment would indicate that the object of service of summons is threefold; ***firstly***, to apprise the defendant of the institution of a suit by the plaintiff against him; ***secondly***, to furnish the defendant with a copy of the plaint filed against him; and ***thirdly***, to inform the defendant of the day, date, year, time and the Court before which he is required to appear and answer the suit, either personally or through his learned counsel. Thus, the object of service of summons is not merely to secure the appearance of the defendant before the Court, but also to afford him an opportunity to acquaint himself with the pleadings and effectively answer the claim made against him.

15. In the case at hand, the order dated 16.10.2025 passed by the Commercial Court would indicate that, upon the appearance of the defendants, the Commercial Court directed the plaintiff to furnish copies of the plaint along with the

accompanying documents to the defendants. It is the specific contention of the petitioners that, notwithstanding the said direction, the plaintiff furnished copies of the plaint and the accompanying documents only on 11.11.2025.

16. This Court, bearing in mind the object underlying the service of summons, as elucidated by the Hon'ble Supreme Court in ***Auto Cars*** (supra), and having regard to the peculiar facts and circumstances obtaining in the present case, is of the considered view that the period prescribed for filing the written statement ought to be reckoned from 11.11.2025, the date on which copies of the plaint and the accompanying documents are stated to have been furnished to the defendants. Consequently, the Commercial Court was not justified in reckoning the statutory period of 120 days from 22.04.2025, merely on the strength of the postal endorsement of "not claimed", and in denying the defendants their right to file the written statement on that basis.

17. In view of the foregoing, the following:

O R D E R

I. The writ petition stands ***allowed***.

II. The impugned order dated 08.12.2025 passed by the LXXXIX Additional City Civil and Sessions Judge, Bengaluru, in Commercial O.S. No. 152 of 2025 is hereby ***set aside***, insofar as it denies the petitioners/defendant Nos. 1 to 4 the right to file their written statement.

III. The petitioners/defendant Nos. 1 to 4 are hereby permitted to file their written statement before the Commercial Court on or before 18.11.2026.

IV. The Commercial Court shall take on record the written statement, if filed within the time stipulated above, and proceed with the suit in accordance with law.

Sd/-
(K. V. ARAVIND)
JUDGE

VBS