



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CR-6578-2023(O&M)

Mita India Private Limited

... Petitioner

Versus

M/s Yaskawa India Pvt. Ltd.

... Respondent

2. CR-6430-2025(O&M)

M/s Yaskawa India Pvt. Ltd.

... Petitioner

Versus

Mita India Private Limited

... Respondent

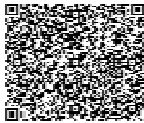
Date of decision : 18.03.2026

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate,
Mr.Kushagra Mahajan, Advocate and
Mr.Lakshay Sawhney, Advocate
for the petitioner in CR-6578-2023.

Mr.Manish Kohli, Advocate and
Mr.Tavinder Sidhu, Advocate (through V.C.), and
Mr.Birinder Pal, Advocate
for the petitioner in CR-6430-2025 and
for the respondent in CR-6578-2023.

Mr.Munish Gupta, Advocate
for the respondent in CR-6430-2025.



VIKAS BAHL, J.(ORAL)

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CHALLENGE IN THE PRESENT REVISION PETITIONS

1. The present order would dispose of two civil revision petitions arising from two separate orders passed in the same suit. In the first civil revision, i.e., CR-6578-2023 which has been filed by the plaintiff Mita India Private Limited, the challenge is to the order dated 24.08.2023 passed by the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram, vide which the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 read with Sections 9 and 151 CPC by the respondent-defendant has been allowed and the parties have been referred to Arbitration and the plaint has been rejected. The second civil



revision i.e., CR-6430-2025 has been filed by the defendant M/s Yaskawa Private Limited in which challenge is to the order dated 18.08.2025 vide which the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram had dismissed the application filed by the petitioner –defendant for placing on record the written statement moved by the defendant as the same has been filed beyond the period of 120 days from the date of service, which is the outer period for filing written statement in a commercial suit.

BRIEF BACKGROUND OF THE CASE

2. Mita India Private Limited had filed a suit for recovery of Rs.1,28,11,298/- with pendente lite and future interest at 15% p.a. in the Court of Additional District Judge-cum-Presiding Officer, Exclusive Commercial Court, Gurugram. In the said suit, M/s Yaskawa India Private Limited was the defendant. In the plaint, reference was made to quotation dated 19.09.2018 which was stated to have been sent by the defendant to the plaintiff for the purpose of purchase of YASKAWA Robot Model AR1440 with YRC 1000 Controller and latest digitally controlled Welding Power Source Model RP500-Motoweld. It was further the case of the plaintiff that the plaintiff had issued a purchase order no.18302 dated 15.10.2018 along with its terms and conditions upon the defendant for supply of said robot Model and that the defendant, after having received the payment, had installed and commissioned the said robot on 19.03.2019, and that the production had started at the unit of the plaintiff in August 2019. In the said



suit, in the subsequent paragraphs, the details of the dispute as well as the grounds for claiming the amount were mentioned which are not relevant for the purpose of adjudication of the present two revision petitions.

3. It is not in dispute that the defendant was served on 26.11.2022 (the said date has been wrongly mentioned as 26.12.2022 in the impugned order dated 18.08.2025 and it has been jointly stated before this Court that said date is 26.11.2022 and even in the list of dates and events, at page 5, of CR-6430-2025 filed by the defendant as well as in the written arguments placed on record at page 133 Annexure A/10, the said date of service on the defendant has been rightly mentioned as 26.11.2022) and had an outer period of 120 days for filing the written statement and thus, could have filed the written statement on or before 26.03.2023 since the case was before the Commercial Court and admittedly, the same was not done and an application under Section 8 of the Arbitration and Conciliation Act, 1996 read with Section 9 and 151 CPC was prepared on 22.12.2022 and was filed on 09.01.2023. During the pendency of the said application under Section 8 of the Arbitration and Conciliation Act, 1996, the last date for filing the written statement elapsed and the written statement was not filed even though there was no stay of proceedings. On 24.08.2023, the application filed by the defendant under Section 8 of the Arbitration and Conciliation Act, 1996 was allowed and the parties were directed to arbitrate in terms of the arbitration agreement and the plaint was rejected. The said order was challenged by the plaintiff by filing CR-6578-2023.



4. On 16.11.2023, the Co-ordinate Bench of this Court while issuing notice of motion was also pleased to stay the operation of the order dated 24.08.2023. The order dated 16.11.2023 passed by the Co-ordinate Bench is reproduced hereinbelow:-

*“Present: Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate and
Mr. Tejas Parashar, Advocate
for the petitioner.*

This revision petition has been filed by the petitioner/plaintiff impugning the legality of order dated 24.08.2023 (Annexure P/6), rendered by Exclusive Commercial Court, Gurugram, vide which application under Section 8 of the Arbitration and Conciliation Act, 1996, moved by respondent/ defendant has been allowed and matter has been ordered to be referred to arbitration in terms of arbitration agreement between the parties and resultantly, the plaint filed by the plaintiff has been rejected.

*Learned counsel for the petitioner/plaintiff inter alia contends that Proposal dated 19.09.2018 (Annexure P/2) for purchase of Yaskawa ARC Welding Robot was given by respondent/defendant (Supplier) to petitioner/plaintiff (Buyer) and there was a condition therein that in case any dispute or difference arises under or in connection with the agreement, matter was to be referred to the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. **Validity of said offer was for seven days. However, vide Purchase Order dated 15.10.2018 (Annexure P/3), petitioner/plaintiff had asked for purchase of above said article and specifically enshrined therein the terms and conditions as under:***

*“1. Unless the purchase order expressly provides otherwise, it is limited to these terms and conditions. **Buyer hereby objects to any additional or different terms proposed by supplier in any quotation, acknowledge or other document. Any such proposed term shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the Purchase Order/contract between the parties.***



2. This Purchase order/Contract, whether or not issued with reference to a quotation or proposal of supplier, shall constitute an offer. Acceptance by supplier is expressly limited to the terms and conditions hereof and may be evidenced by returning the acknowledgment form hereof or by commencement of performance. No change or modification in this Purchase order/Contract shall be valid unless confirmed in writing by the Buyer.”

*By virtue of condition No.1 of Purchase Order dated 15.10.2018 any such proposed term shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the Purchase Order/contract between the parties and, thus, vide clause 18 of the Purchase Order (Annexure P/3) in case of disagreement or dispute of any kind, either on the order or more generally on the business relationship between the Buyer and the Supplier the Trade Court at Ghaziabad only will be the competent Court to settle such dispute. He further submits that in this scenario, though in the Purchase Order dated 15.10.2018 in the column meant for 'GST', a specific note was appended that the quotation No.AT/R/AW/18-19/037/REV.1.1 dated 19.09.2018 (Annexure P/2) and Annexure – A are integral part of this Purchase Order **but by virtue of clause 18 of Purchase Order, Forum to settle the dispute between Buyer and the Supplier was restricted to Trade Court, Ghaziabad and there was no stipulation to refer the matter to arbitration.** He further submits that since head office of respondent/defendant falls within territorial jurisdiction of Courts at Gurugram, and the instant matter being 'commercial dispute', thus, suit for recovery was rightly instituted at Exclusive Commercial Court at Gurugram. He further submits that learned Trial Court has wrongly allowed the above said application moved at the instance of respondent/defendant.*

Notice of motion for 12.01.2024.

*Meanwhile, operation of impugned order dated 24.08.2023 (Annexure P/6) is stayed.
16.11.2023”*

5. The said interim stay has been continuing and it has been



jointly submitted before this Court that the plaintiff witnesses have been examined and cross-examined by the defendant and the case is now fixed for arguments on 30.03.2026.

6. In the meantime, an application for placing on record the written statement was filed by the defendant. The Commercial Court vide order dated 18.08.2025 had dismissed the said application on the ground that the written statement is to be filed in a commercial dispute within a period of 30 days of service and thereafter the Court has the power to allow the defendant to file written statement on subsequent date for the reasons to be recorded in writing and on payment of costs which the Court deems fit but the said period cannot be later than 120 days from the date of service of summons. The said order is the subject matter of challenge by the defendant in CR-6430-2025.

ARGUMENTS ON BEHALF OF THE PETITIONER-PLAINTIFF IN CR-6578-2023

7. Learned senior counsel for the petitioner-plaintiff has submitted that the Commercial Court has not taken into consideration the terms of the subsequent purchase order dated 15.10.2018 while allowing the application under Section 8 of the Arbitration and Conciliation Act, 1996. It is submitted that a perusal of the said purchase order would clearly show that the terms, which have been expressly stated in the said purchase order, would prevail over any term in the quotation. It is submitted that as per clause 18 of the purchase order, it is specifically stated that in case of disagreement or dispute of any kind, either on the order or even generally



on the business relationship between the buyer and the supplier i.e., the plaintiff and the defendant, the trade Court in Ghaziabad only will be the competent Court to settle such a dispute. It is submitted that in view of clause 18 of the purchase order, the arbitration clause in the earlier proposal was superseded / replaced by the said clause 18 and it is the said clause 18 which would govern the rights of the parties. It is submitted that reading of the two admitted documents i.e., the proposal given by the defendant and the purchase order made by the plaintiff would clearly show that the arbitration clause was not reiterated rather the same was superseded by clause 18 of the purchase order. It is submitted that even on the aspect of warranty, the clause, as mentioned in the proposal, was superseded by the subsequent clause in the purchase order. It is thus argued that even in case the proposal is to be taken into consideration, then, also the clauses which have been specifically superseded or are contrary to the clauses mentioned in the purchase order would not govern the rights of the parties and it is the said clauses in the purchase order which would govern the relationship between the parties. It is further argued that a perusal of the proposal would show that the offer made by the defendant was valid only for 7 days and the plaintiff had put forth the purchase order on 15.10.2018 i.e., beyond the period of 7 days, and thus, it is the purchase order which in true terms was the offer and the fact that the said offer was accepted by the defendant is not in dispute.

**ARGUMENTS ON BEHALF OF THE RESPONDENT-DEFENDANT
IN CR-6578-2023**



8. Learned counsel for the respondent, on the other hand, has opposed the present revision petition and has submitted that in the purchase order, it has specifically been mentioned that the quotation dated 19.09.2018 is to be read as an integral part of the purchase order dated 15.10.2018 and thus, the terms of the quotation are to be read into the purchase order. It is submitted that clause 1, 2 and 18 of the purchase order are routine clauses and they would not have the effect of superseding or replacing the clause with respect to the arbitration which has been specifically provided in the proposal. It is further submitted that under Clause 9 of the proposal, there is clause for jurisdiction in which it has been stated that disputes would be subject to Gurgaon, Haryana jurisdiction and since the present suit had been filed in Gurugram, the same clearly shows that, even as per the understanding of the plaintiff, it is the said terms of the proposal which would govern the rights of the parties. It is submitted that in the said circumstances, the impugned order dated 24.08.2023 is in accordance with law and deserves to be upheld and the plaint filed by the plaintiff deserves to be rejected.

ANALYSIS AND FINDINGS IN CR-6578-2023

9. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the impugned order dated 24.08.2023 is against law and deserves to be set aside and the present revision petition deserves to be allowed for the reasons stated hereinafter.

10. Both the petitioner-plaintiff and the respondent-defendant have



relied upon the proposal dated 19.09.2018 as well as the purchase order dated 15.10.2018 which have been placed on record as Annexure P-2 and P-3 along with CR-6578-2023. The relevant portions of the proposal which have been highlighted are reproduced hereinbelow:-

“4) VALIDITY OF OFFER: 07 day

xxx xxx xxx

6) WARRANTY: YIND will provide warranty for the system/items supplied will be free from manufacturing defects for a period of 12 months from the date of invoice. The warranty does not cover improper operation and maintenance or accidents cause due to negligence on the part of operator.

xxx xxx xxx

9) JURISDICTION: Subject to Gurgaon, Haryana jurisdiction.

xxx xxx xxx

11) ARBITRATION: Any dispute or difference arising under or in connection with this agreement or any breach thereof, which cannot be settled by friendly negotiation and agreement among the parties, shall be finally settled by arbitration, with three arbitrators to be appointed, one arbitrator to be appointed by YIND, one arbitrator to be appointed by the other party and the umpire to be appointed by the two arbitrators, the arbitration being conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The venue of the arbitration proceedings shall be in India. The costs of arbitration will be equally shared by the parties.

Assuring you of your best attention!”

Clause 4 and clause 6 have been relied upon on behalf of the plaintiff and clause 9 and clause 11 have been relied upon on behalf of the defendant.

11. The purchase order dated 15.10.2018, which has also been relied upon by both the parties to make out their case, has been annexed as

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Annexure P-3. The relevant clauses of the said purchase order are reproduced hereinbelow:-

“NOTE: YOUR QUOTATION NO AT/R/AW/18-19/037/REV.1.1 DATED 19/09/2018 & OUR ANNEXURE 'A' ARE INTEGRAL PART OF THIS PURCHASE ORDER NO 18302 DATED 15.10.2018

xxx xxx xxx

TERMS & CONDITIONS OF OUR PURCHASE ORDER

1. Unless the purchase order expressly provides otherwise, it is limited to these terms and conditions. Byer hereby objects to any additional or different terms proposed by supplier in any quotation acknowledge or other document. Any such proposed term shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the Purchase Order/contract between the parties.

2. This Purchase order/Contract, whether or not issued with reference to a quotation or proposal of supplier, shall constitute on offer. Acceptance by supplier is expressly limited to the terms and conditions hereof and maybe evidenced by returning the acknowledgment form hereof or by commencement of performance. No charge or modification in this Purchase order/Contract shall be valid unless confirmed in writing by the Buyer.

xxx xxx xxx

18) In case of disagreement or dispute of any kind, either on the order or more generally on the business relationship between the Buyer and the Supplier the trade court in Ghaziabad only will be competent court to settle such dispute.

19. Supply expressly warrants that all materials covered by this order will conform to the standards, specifications, drawings, samples, models, 3-D geometry or other description furnished or expressly adopted by Buyer, and will be of good material and workmanship, and free from defects, including defect in design (if Supplier Design) and, if custom designed by supplier for the application Buyer specified be comparable in quality to similar customs good sold for similar application. Any defect, attributed too defects in material, Manufacturing and Workmanship appearing within 24 months from the date of receipt. Supplier shall reimburse or replace the parts free of cost or reimburse the cost of repairs at actual.

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xxx xxx xxx

ANNEXURE "A" TO

PURCHASE ORDER NO.18302 DATED 15/10/2018.

xxx xxx xxx

12. *WARRANTY:- 12 months from the date of commissioning.*"

12. The note with respect to quotation, which is stated to be an integral part of the purchase order, has been relied upon by the defendant, whereas clauses 1, 2, 18 and 19 have been relied upon by the plaintiff.

13. The moot question which arises for consideration in the present case is as to whether the arbitration clause in the proposal is superseded / replaced by clause 18 of the purchase order. Clause 1 and 2 of the purchase order specifically provides that the buyer (plaintiff) specifically objects to any additional or different terms proposed by supplier in any quotation or other document and that any such proposed term shall be void and the terms contained in the purchase order shall constitute the complete and exclusive statement of the terms and conditions of the purchase order / contract between the parties. It was further stated in clause 2 that the purchase order/ contract whether or not issued with reference to a quotation or proposal of supplier, shall constitute an offer and that acceptance by supplier i.e., defendant is limited to the terms and conditions thereof and could be evidenced by returning the acknowledgement form. It was again reiterated that no change or modification in this purchase order / contract shall be valid unless confirmed in writing by the buyer/plaintiff.

14. It would be relevant to mention that the validity of the offer made as per the proposal dated 19.09.2018 was 7 days and the present



purchase order was made by the plaintiff after the period of 7 days has lapsed i.e., on 15.10.2018. It is not disputed before this Court that subsequent to the said purchase order dated 15.10.2018, the defendant had acted upon the same and had supplied the robot and thus, the purchase order was duly accepted. Although by virtue of the note, the terms of the quotation/ proposal became the part of the purchase order but reading of the two documents together would clearly show that in case any term in the subsequent purchase order is expressly provided for and the same is in contradiction or is different from the term provided in the proposal / quotation, then, it is the term in the purchase order which should govern the rights of the parties and not the term mentioned in the proposal. Under clause 18, it is specifically provided that in case of disagreement or dispute of any kind, either on the order placed or even generally on the business relationship between the buyer and the supplier, it would be the trade Court only which would have the jurisdiction. The said clause cannot coexist with the arbitration clause, as the arbitration clause also provides that any dispute or difference arising under or in connection with the agreement or any breach thereof is to be settled by arbitration. Thus, it is the clause 18 of the purchase order which would prevail and not clause 11 of the proposal.

15. Learned counsel for the defendant has highlighted clause 9 of the proposal which is reproduced hereinabove to show that earlier the case was subject to Gurgaon, Haryana jurisdiction and has argued that it is the said clause which has been superseded by clause 18 of the purchase order.



This Court is not impressed with the said argument. Rather a joint reading of clause 9 of the proposal and clause 18 of the purchase order would show that clause 18 of the purchase order has been purposely drafted in a manner to encompass all disputes and thus, once clause 18 applies, the clause regarding arbitration would not govern the rights of the parties. It cannot be said that clause 1, 2 and 18 of the purchase order are only general clauses, rather these are specific clauses specifically governing the rights of the parties.

16. Additionally, a comparison between the warranty clause in the proposal and in the purchase order would show that the warranty period was 12 months from the date of invoice in the proposal, whereas under clause 19 in the purchase order, in case of any defect attributable to the defects in material, manufacturing and workmanship appearing within 24 months from the date of receipt, the defendant was required to replace or reimburse the parts free of cost. Thus, there was difference in the said clauses. Learned counsel for the defendant has highlighted clause 12 of Annexure “A” of the purchase order to show that the warranty is for 12 months only but even in the said clause, it would be apparent that the said period of 12 months is from the date of commissioning and not from the date of invoice as mentioned in clause 6 of the proposal. Thus, it is apparent that in certain clauses there was modification /change in the purchase order and it is the said modification / change which should govern the rights of the parties.

The Commercial Court fell in grave error by not properly construing the



abovesaid clauses and thus, caused grave injustice to the petitioner by rejecting the plaint filed by him. The Co-ordinate Bench of this Court while staying the operation of the impugned order in effect permitted the proceedings in the suit to continue and the proceedings in the suit have continued and the case is now fixed for arguments.

17. Before parting with the present order with respect to CR-6578-2023, it would be relevant to note that although under Section 8 of the Commercial Courts Act, 2015, there is a bar from filing revision petition to challenge an interlocutory order but the Co-ordinate Bench of this Court in the case of ***Ostuka Chemicals (India) Private Limited vs. Trans Engineers India Pvt. Ltd.*** reported as **2026 NCPHHC 5791** while dealing with the aspect of maintainability had observed that the bar under Section 8 of the Commercial Courts Act on entertainment of civil revision application or petition would not be applicable in case the civil revision is filed under Article 227 of the Constitution of India against any interlocutory order of a Commercial Court and that under Article 227 of the Constitution of India, the High Court has the power to entertain civil revision petition against any interlocutory order passed by the Commercial Court and thus, such a revision petition was maintainable and also entertainable. It was further held that the power under Article 227 of the Constitution of India is a very wide and discretionary power, although it is to be exercised sparingly and only in appropriate cases. The said judgment of the Co-ordinate Bench of this Court has been upheld by the Hon'ble Supreme Court vide order dated 17.03.2026



passed in Special Leave to Appeal (Civil) No.9022-9023/2026. In the present case, this Court has exercised powers under Article 227 of the Constitution of India in view of the fact that the impugned order is absolutely illegal and against law and in case the same is not set aside, then, the same would cause irreparable loss to the petitioner. As per section 8 of the Commercial Courts Act 2015, the interlocutory order, against which revision is not maintainable, can be challenged in appeal in case the decree of the Commercial Court is against the person, who is aggrieved by the said order. In the present case, even that remedy is not available to the petitioner as in case the impugned order is allowed to stand the matter would be referred to the Arbitration and there would be no occasion for a final decree to be passed by the Commercial Court so as to keep the remedy of the petitioner to challenge the impugned order along with the proposed appeal alive. Thus, in the peculiar and exceptional facts and circumstances of the present case, this Court finds that the present revision petition under Article 227 of the Constitution of India deserves to be entertained and impugned order deserves to be set aside.

18. Accordingly, the present revision petition is allowed and impugned order dated 24.08.2023 is set aside and the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 is dismissed.

CHALLENGE IN CR-6430-2025

19. Challenge in the present revision petition is to the order dated 18.08.2025 vide which the application filed by the defendant, for placing on



record the written statement, has been dismissed.

**ARGUMENTS ON BEHALF OF THE PETITIONER-DEFENDANT
IN CR-6430-2025**

20. Learned counsel for the defendant in the present case has submitted that there were exceptional facts and circumstances in the present case on account of which the written statement should be permitted to be filed even after the period of 120 days. It is submitted that although the defendant was served on 26.11.2022 but the defendant prepared an application under Section 8 of the Arbitration and Conciliation Act on 22.12.2022 and immediately on the first date of appearance i.e., 09.01.2023 had filed the same. It is submitted that since the said application was pending, the defendant did not file the written statement within a period of 120 days as the defendant was very sanguine that the said application would be allowed and in fact the said application was allowed on 24.08.2023. It is submitted that thereafter, since the order dated 24.08.2023 was stayed by the Co-ordinate Bench of this Court, thus, without wasting further time, the defendant had moved an application for taking on record the written statement which has been illegally disallowed by virtue of the impugned order dated 18.08.2025. It is submitted that the facts and circumstances of the present case are exceptional and in the said circumstances, the defendant should be permitted to place on record the written statement.

**ARGUMENTS ON BEHALF OF THE RESPONDENT-PLAINTIFF IN
CR-6430-2025**

21. Learned counsel for the plaintiff has submitted that it is not in



dispute that the written statement had not been filed within a period of 120 days from the date of service i.e., 26.11.2022 in spite of the fact that there was no stay of proceedings and in view of the law laid down by the Hon'ble Supreme Court of India in the case of ***M/s SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others*** reported as ***2019(12) SCC 2010***, the defendant cannot be given the right to file written statement and thus, the impugned order has been rightly passed and calls for no interference.

ANALYSIS AND FINDINGS IN CR-6430-2025

22. The Hon'ble Supreme Court in the case of ***M/s SCG Contracts India Pvt. Ltd. (supra)***, had observed that a perusal of the provisions of Commercial Courts Act, 2015 would show that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and that there is a mandate for the Court to not allow the written statement to be taken on record beyond the said period. It was further observed that merely because an application for rejection of the plaint under Order 7 Rule 11 CPC has been filed, the same cannot be made as a "ruse for retrieving the lost opportunity to file the written statement". In view of the said proposition of law, the Hon'ble Supreme Court had set aside the impugned order therein, which had permitted the defendant therein to file the written statement beyond the stipulated period of 120 days. The relevant portion of the said judgment is reproduced as under: -

"8) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on

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23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for 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 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 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 8 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 8, 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

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*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.***

xxx xxx xxx

11. *We are of the view that the view taken by the Delhi High Court in these judgments **is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.***

12) *However, learned counsel appearing for the respondents relied strongly upon the judgment in **Bhanu Kumar Jain (supra) and Shaikh Salim Haji Abdul Khayumsab (supra)** and, in particular, paras 22 and 27 of the first judgment and paras 4 & 19 of the second judgment.*

13) *We are of the view that since both these judgments dealt with the pre-amendment position, they would not be of any direct reliance insofar as the facts of the present case is concerned.*

14) *Learned counsel appearing for the respondents also relied upon **R.K. Roja Vs. U.S. Rayudu and another (supra)** for the proposition that the defendant is entitled to file an application for rejection of plaint under **Order VII Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order VII Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records “However, we may hasten to add that the liberty to file an application for rejection under **Order 7 Rule 11 CPC** cannot be made as a ruse for retrieving the lost opportunity to file the written statement”.***

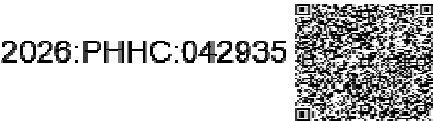
xxx xxx xxx



17) Clearly, therefore, the 05.12.2017 order which applies in the face of the amendments made to the Civil Procedure Code cannot be sustained.....”

In the said case, it was observed that liberty to file an application for rejection of plaint under Order 7 Rule 11 CPC cannot be made as a reason for granting more time to file written statement.

23. In the present case, it is not in dispute that on 26.11.2022 the defendant was served and was required to file written statement within 30 days and the Court had the power to extend that period for another 90 days and thus, the total period for filing the written statement was 120 days i.e., upto 26.03.2023. Admittedly, the written statement was not filed within the said period and as per settled law there is no discretion with the trial Court to extend the said period further and thus, the trial Court had rightly passed the impugned order. The mere fact that the defendant had filed an application under Section 8 of the Arbitration and Conciliation Act which was decided on 24.08.2023 would not come to the rescue of the defendant as neither there was any stay of proceeding till 26.03.2023, the last date till which the written statement was to be filed nor any provision of law has been highlighted before this Court to show that there was any bar against filing written statement by the defendant during the pendency of application under Section 8 of the Arbitration and Conciliation Act. In fact the time period given for filing of the written statement with respect to commercial disputes instituted in Commercial Courts, does not provide for any exception. The proposition of law as propounded by the Hon’ble Supreme



Court in the case of *M/s SCG Contracts India Pvt. Ltd. (supra)* would apply on all fours to the present case also.

24. Additionally it would be relevant to mention that the entire evidence has been led by the plaintiff by virtue of the fact that the earlier order allowing the application under Section 8 of the Arbitration and Conciliation Act was stayed by the Co-ordinate Bench of this Court and the case is now fixed before the trial Court for final arguments on 30.03.2026 and thus, allowing the present revision petition would cause grave prejudice to the plaintiff and the entire matter would have to be tried de novo.

25. Keeping in view the abovesaid facts and circumstances, the impugned order dated 18.08.2025 is upheld and the present revision petition being meritless deserves to be dismissed and is accordingly dismissed.

26. Pending application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

March 18, 2026.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No