2026:AHC:210901

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 13888 of 2026

Meerut Nagar Nigam

.....Petitioner(s)

Versus

M/s LV Constructions Pvt. Ltd.

.....Respondent(s)

Counsel for Petitioner(s)	:	Namit Kumar Sharma
Counsel for Respondent(s)	:	Sohan Lal Yadav

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Namit Kumar Sharma, learned counsel for the defendant-petitioner and Sri Sohan Lal Yadav for the plaintiff-respondent.

2. A joint statement has been made by the learned counsel for the parties that they do not propose to file any affidavit and the petition be decided on the basis of the documents available on record.

3. The case of the defendant-petitioner is that the plaintiff-respondent instituted an Original Suit No. 276 of 2023 before the Commercial Court, Meerut purported to be under Section 7 of the Specific Relief Act read with Section 9 of the CPC seeking recovery of Rs.25,72,136.00. The suit came to be verified on 14.08.2023. As per the pleadings, post-issuance of notice, the defendant-petitioner put in his appearance while filing Vakalatnama/ power on 08.12.2023. Thereafter dates were fixed on 16.01.2024, 16.02.2024, 15.03.2024, 27.03.2024, 30.04.2024 and 31.05.2024. However written statement could not be filed by the defendant-petitioner and on 19.07.2024, an application came to be preferred seeking permission to file written statement which was objected by the petitioner respondents on 07.08.2024 and by virtue of the order dated 29.05.2025 passed by the Presiding Officer, Commercial Court, Court No. 2, Meerut in O.S. No. 276 of 2023, the Application 17Ga seeking permission to file written statement came to be rejected.

4. Questioning the order dated 29.05.2025 passed by the Presiding Officer, Commercial Court, Meerut, in O.S. No. 276 of 2023, the present

petition under Article 227 has been preferred.

5. Learned counsel for the defendant-petitioner has sought to argue that there were reasons beyond the control and the comprehension of the defendant-petitioner, which created a situation whereby, on account of Lok Sabha Elections, the officers and the employees of the petitioner-organisation were busy in elections, on account whereof the written statement could not be filed. However, an application came to be preferred on 19.07.2024 being Application No.17Ga seeking permission to file written statement, which has been rejected in a cursory manner. Submission is that the approach of the Court should be to advance justice on the basis of pleadings and not to throttle a right while forfeiting it to file written statement.

6. Countering the said submissions, Sri Yadav, who appears for the plaintiff-respondent submits that Order VIII Rule 1 of the CPC, which provides for filing of the written statement, is directory but so far as the filing of the written statement in the proceeding before Commercial Court in a commercial suit is concerned, the same is mandatory and the written statement is to be filed within a period of 30 days with a grace period of 90 days in that regard totaling 120 days and once 120 days stands lapse, then there cannot be any leverage while permitting filing of written statement within the extended period beyond 120 days. Reliance has been placed upon the decision of the Hon'ble Apex Court in ***M/s. SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd*****, 2019 (12) SCC 210**.

7. I have heard the submissions so made across the Bar and perused the record carefully.

8. The bone of contention between the parties is whether the Commercial Court was justified in rejecting the application 17 Ga while permitting the defendant-petitioner to file written statement beyond 120 days. Apparently, the suit came to be instituted on 14.08.2023 by the plaintiff-respondents and the defendant-respondents had put in their appearance on 08.12.2023. Thereafter, the dates fixed was 16.01.2024, 16.2.2024, 15.03.2024, 27.03.2024, 30.4.2024 and 31.05.2024. However, the written

statements could not be filed. The defence and the stand taken by the defendant petitioners is that on account of Lok Sabha Elections the officers and the employees of the petitioner organization were busy in elections and that became a factor in not filing the written statement. The application seeking permission to file written statement dated 19.07.2024 registered at Paper No. 17 Ga was objected by the plaintiff respondents on 07.08.2024 and thereafter, by virtue of the order impugned dated 29.05.2025 of the Commercial Court the application seeking permission to file written statement has been rejected. Order VIII Rule 1 and 10 of the CPC reads as under:-

"***1. Written statement. —*** *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.*

High Court Amendments

ALLAHABAD. — The full stop shall be omitted and the following added at the end of the rule, namely:"and shall file with his written statement a list of full documents (whether in his possession or power or not) on which he relies as evidence in support of his defence." (17-1-1953).

....

10. Procedure when party fails to present written statement called for by Court. — *Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.*

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High Court Amendments

ALLAHABAD. — Add the following new Rules 11 and 12: —

"11. Every party, whether original, added or substituted, who appears in any suit or other proceeding shall on or before the date fixed in the summons or notice served on him as the date of hearing, file in Court a proceeding stating his address for service,

written in Hindi in Devnagri script, and if he fails to do so he shall be liable to have his defence, if any, struck out and to be placed in the same position as if he had not defended. In this respect the Court may act suo motu or on the application of any party for an order to such effect, and the Court may make such order as it thinks just. [Amended 1971 LLT-V-18].

12. Rules 20, 22, 23, 24 and 25 of Order VII shall apply, so far as may be, to addresses for service filed under the preceding rule." (1-6-1918)."

9. The question whether the timeline stipulated in the said provision is mandatory or directory came up for consideration in ***M/s. SCG Contracts India Pvt. Ltd. (supra)*** wherein it was observed that in the suits other than commercial, the said provision are directory and not mandatory as held in ***Kailash vs Nanku*** **2005(4) SCC 480**, however, in the commercial suits before the Commercial Court, they are mandatory, thus no leverage can be accorded in this regard. The following was observed:-

"*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.*

....

16. Learned counsel for the respondents then strongly relied upon the inherent powers of the Court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the view that this argument has also no legs to stand on, given the judgment of this Court in ***Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal 1962 Suppl SCR 450****. In this judgment, the Court held:*

> *"The suit at Indore which had been instituted later, could be stayed in view of s.10 of the Code. The provisions of that section are clear, definite and mandatory. A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under s.151 is not justified..."*

(at page 470)

Clearly, the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein."

10. Accordingly the Court finds that there has been no error committed by the court below in foreclosing the right of the defendant-petitioner to file written statement. Apart from the same, the Court finds that the order of the Commercial Court is dated 29.05.2025, but the present petition has been presented before this Court on 28.09.2026 after a delay of 394 days in that regard, which also denudes even otherwise any grant of indulgence in that regard.

11. Since no ground is made out for interference, resultantly the petition is **dismissed**.

(Vikas Budhwar,J.)

October 8, 2026
N.S.Rathour

Digitally signed by :-
NIPENDRA SINGH RATHOUR
High Court of Judicature at Allahabad