

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 23rd of June, 2026

PRESENT: Hon'ble Mr. Justice G. Chandrasekharan
CHAIRPERSON

M.A:49/2026

(MA 23/2026 in OA 252/2019 on the file of DRT, Coimbatore)

BETWEEN

1. Mrs. Rajalakshmi Jawahar,
W/o. G. Jawahar,
141/71, T.V. Samy Road,
R.S. Puram,
Coimbatore – 641 002.

2. Mr. G. Jawahar,
S/o. V.P. Gopal,
141/71, T.V. Samy Road,
R.S. Puram,
Coimbatore – 641 002.

.....Appellants

AND

M/s. City Union Bank Limited,
Represented by its Assistant General Manager,
Mr. G. Vishwanathan,
27 – 30 Sarojini Street,
Ram Nagar,
Coimbatore – 641 009.

...Respondent

Counsel for Appellants : Learned Sr. Advocate Mr. Jayash Dolia for
M/s. Aiyar & Dolia
Counsel for Respondent : M/s. Ananda Gomathy

ORDER

1. Aggrieved against the order passed in MA 23/2026 in OA 252/2019 by the Learned Presiding Officer, DRT, Coimbatore, on 14.05.2026, Appellants/Defendants in the OA 252/2019 filed this Appeal.

2. The facts in brief, leading to the filing of this Appeal are that the Respondent Bank filed OA 252/2019 for recovery of Rs.11,41,78,900.70p with contractual rate of interest at 13.50% p.a. with compounded monthly rests, together with penal interest at 2% p.a. and for other consequential and incidental reliefs. After contest, the Original Application was allowed by the Learned Presiding Officer, DRT, Coimbatore, on 02.05.2024. Aggrieved against the order dated 02.05.2024, the Appellants filed CRP No. 2514/2024 before Hon'ble High Court of Madras. The Hon'ble High Court of Madras, found that the order of Learned Presiding Officer, DRT was apparently a non-speaking order, did not decide the issue raised before it on the basis of various defences taken

by the Defendants. Thus, set aside the order and remanded the matter for consideration afresh and in accordance with law, within two months. Thereafter, the Hon'ble High Court, by its order dated 26.03.2026, extended time by three months, and one month time was given for exploring the possibility of settlement through Mediation. Thus, the Learned Presiding Officer required to dispose of the case, on or before 26.06.2026. After the matter was taken on file for disposing afresh and in accordance with law, as per order of the Hon'ble High Court dated 29.07.2025 in CRP No. 2514/2024, the Respondent Bank filed MA 23/2026, to struck off the Written Statement filed by the Appellants in the Original Application on the ground of limitation. Learned Presiding Officer, after hearing both the parties, passed an order and allowed the Application in MA 23/2026, on 14.05.2026. That order is now challenged in this Appeal.

3. Learned Senior Counsel for the Appellants submitted that after the Appellants entered appearance in OA 252/2019, the OA was not listed before the Tribunal for quite

a long time. When the matter was listed, Appellants sought time to file Written Statement and that was permitted. The Written Statement was filed on 09.06.2023. Thereafter, the Respondent Bank filed Proof Affidavit and the Appellants filed Counter Proof Affidavit. An enquiry was held and the OA was allowed on 02.05.2024. The Respondent had not at any point of time, either at the time of filing of Written Statement or immediately thereafter, or at least prior to the disposal of the OA, raised any objection with regard to the delayed filing of the Written Statement. It amounts to acquiescence, waiver and abandonment of right to challenge the receipt of Written Statement filed with delay.

4. Appellants filed an Application seeking for cross-examination of the official witness of the Bank to prove their case. Only to avoid the cross-examination and to deny the opportunity to defend the claim of the Respondent Bank and to get an order in its favour on technical grounds and not on merits, the Respondent filed MA 23/2026. The valid grounds raised by the Appellants, especially, the claim of

acquiescence, waiver and abandonment of right to challenge the delayed filing of the Written Statement, were not properly considered by the Learned Presiding Officer. The Learned Presiding Officer is hearing the matter expeditiously to comply with the directions of the Hon'ble High Court to dispose of the case within the specified period. In the said circumstances, the Learned Counsel for Appellants prayed for allowing the Appeal, meanwhile sought for staying the further proceedings.

4.1. He pressed into service the decision of the Hon'ble Supreme Court in **M/s. Anvita Auto Tech Works Pvt. Ltd. Vs. M/s. Aroush Motors and Anr.**, reported in 2025 INSC 1202 for the proposition that *“procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It is the handmaid of justice and not its mistress”*, as per the words of Hon'ble justice V.R. Krishna Iyer. He further elaborated that the provisions made available in RDB Act for filing Written Statement within 45 days are only procedural in nature. In the aforesaid decision, the Hon'ble Supreme

Court permitted the filing of the Written Statement subject to payment of costs of Rs.1 Lakh and permitted to exercise the right of cross- examination of the Plaintiff's witnesses. Relying on this decision, he submitted that the Written Statement received in this case by the Tribunal is to be considered for the disposal of the OA on merits.

5. In reply, Learned Counsel for Respondent seriously opposed the submission of the Learned Counsel for Appellants and submitted that Section 19(5) (i) of RDB Act, 1993, requires the Defendant to file Written Statement within 30 days from the date of service of summons, subject to an extension of 15 days in exceptional cases and for special circumstances recorded in writing. This provision is mandatory and not directory, as decided in various judicial pronouncements relied by the Learned Presiding Officer. Merely because the delayed filing of the Written Statement was not challenged earlier, it does not mean that the Respondent Bank had lost its right to challenge the legal violation committed by the Appellants. There is no question

of acquiescence, waiver or abandonment of right against the provisions of the statute. The question of law can be raised at any point of time. The Learned Presiding Officer considered all these aspects and passed a detailed order relying on several decisions. The important among them is the decision of the Hon'ble Supreme Court in **M/s. SCG Contracts Indian Pvt. Ltd. Vs. K. S. Chanmankar Infrastructure Pvt. Ltd. & Ors.**, in *Civil Appeal No. 1638/2019*. It is categorically held in this case, arising out of a commercial dispute, that the Written Statement required to be filed within 120 days from the date of service of summons, and that, Order VIII Rule 1 and 10 cannot be said to be directory, but is mandatory. Thus, the Hon'ble Supreme Court set aside the order passed by the Hon'ble High Court in receiving the Written Statement subject to payment of costs and ordered that Written Statement of the first Defendant therein to be taken off the record.

5.1 Learned Counsel for the Respondent also pressed into service the decision of the Hon'ble Supreme Court in **M/s.**

Anvita Auto Tech Works Pvt. Ltd. Vs. M/s. Aroush Motors and Anr., reported in *AIR 2025 SC 4815* and the decision of the Hon'ble High Court of Madras in *CRP (NPD) 4110/2017*, in **South Indian Mint and Aromatic and 3 Ors Vs. IDBI Bank Limited**, for the same proposition. Thus, Learned Counsel for the Respondent prayed for dismissal of this Appeal.

6. The scope of this Appeal is very limited, namely, whether the order allowing the MA and directing the striking off the Written Statement on the file of OA 252/2019 is in accordance with law and can be sustained?

6.1 This Tribunal, with the consent of the Learned Counsel appearing for the parties, proceeded to hear the main Appeal and accordingly heard the matter.

7. To consider the issue involved in this Appeal, it is necessary to refer to the copy of the proceedings sheet of the

Tribunal. Perusal of the proceedings shows that, on 24.04.2019, the Learned Presiding Officer directed the Registry and the Bank to issue fresh summons to the Defendants for the hearing on 09.07.2019. Thereafter, from 09.07.2019 till 08.03.2022, the case was reposted on several occasions without being heard either by the Registrar or by the Learned Presiding Officer. On 08.03.2022, there was no representation for the Applicant Bank, whereas Advocate S. Panchapakesan filed Vakalat for the Defendants. The Defendants were called absent and the case was reposted to 23.05.2022. On 23.05.2022, the matter was not heard either by the Registrar or by the Learned Presiding Officer and was reposted to 11.08.2022, 31.10.2022, and 14.11.2022 for filing Written Statement. Though there was no representation for the Applicant Bank, the Counsel for the Defendants sought for time to file Written Statement. Registrar was gracious enough to give 2 ½ months at the first instance and 2 weeks at the second instance and one month at the 3rd instance. On 14.11.2022, since Written Statement was not filed despite giving sufficient opportunity, the

Registrar directed the matter to be posted before the Learned Presiding Officer on 15.12.2022. When the matter was posted before Learned Presiding Officer, the parties were represented through their respective Counsel and Counsel for the Defendants sought time for filing Written Statement. The Learned Presiding Officer granted time till 15.02.2023. Thereafter, adjourned the case from 15.02.2023 to 09.05.2023, and from 09.05.2023 to 30.05.2023, and from 30.05.2023 to 09.06.2023 for filing Written Statement. Ultimately on 09.06.2023, the Written Statement was filed and the matter was posted to 28.06.2023 for filing Proof Affidavit. On 28.06.2023, the Bank's Counsel sought time to file Proof Affidavit and on 11.07.2023, the Bank filed Proof Affidavit. The Appellants sought time for filing Counter Proof Affidavit on 28.07.2023 and 08.09.2023, and on 21.09.2023, they filed Counter Proof Affidavit. By proceedings dated 10.01.2024, the Learned Presiding Officer directed that the OA be listed on 24.01.2024. On 02.05.2024, the final order was passed in the OA, allowing the same.

8. Aggrieved by this order, the Appellants filed CRP No. 2514/2024 before the Hon'ble High Court. The Hon'ble High Court found that the Tribunal had passed a perfunctory order without considering the grounds raised in the defence and allowed the OA in a most mechanical fashion, without application of mind and without passing any speaking order. Therefore, the Hon'ble High Court remanded the matter for consideration afresh and in accordance with law. After the remand, the MA 23/2026 has been filed.

9. Affidavit filed in support of MA 23/2026 by the Bank reads that the non-filing of the Written Statement after entering appearance and despite given several adjournments. Since the law is well settled that the Written Statement cannot be filed beyond the period of 30 days and that the extension of 15 days cannot be granted except in exceptional and special circumstances, it was prayed that the Written Statement filed to be struck off.

10. In the counter filed by the Appellants, it was reiterated that the Appellants filed the Written Statement after obtaining an extension of time from the Tribunal. It was specifically stated that the non-filing of the Written Statement was not raised at any point of time prior to the passing of the final order in the OA. After the delayed filing of the Written Statement, the Bank filed its Proof Affidavit, Appellants filed their Counter Proof Affidavit, and no objection was raised on the delayed filing of Written Statement at that point of time. Thus, the Respondent Bank is barred from questioning the delayed filing of the Written Statement on the principles of *estoppel* and *res judicata*. The Bank did not file its Proof Affidavit immediately on the Appellants' failure to file the Written Statement, but chose to file its Proof Affidavit only after filing the Written Statement. It amounts to acquiescence of the delayed filing of Written Statement. Appellants filed IA 310/2026 seeking to cross examine the officials of the Bank after the matter was remanded by the Hon'ble High Court. Therefore, the Applicant filed MA

23/2026 to avoid the cross-examination and get an order by adopting a shortcut method.

11. The impugned order of Learned Presiding Officer discusses several decisions of the Hon'ble High Court and the Hon'ble Supreme Court with regard to the need to file Written Statement within the period stipulated in RDB Act, 1993. The noted decision is the decision of Hon'ble Supreme Court in **M/s. SCG Contracts Indian Pvt. Ltd. Vs. K. S. Chanmankar Infrastructure Pvt. Ltd. & Ors.**, reported in (2019) 12 SCC 210. Other decisions discussed are 1) **The South Indian Mint and Aromatic Products Ltd. and Ors, Vs. IDBI Bank Limited**, reported in *Indian Kanoon* 2) **M/s. Anitha Garg & Ors. Vs. State Bank of India**, reported in *MANU/DE/1942/2021*, 3) **M/s. Crest Steel and Power Pvt. Ltd. and Ors, Vs. Punjab National Bank and Ors.**, reported in *AIR ONLINE 2018 MP 572* and 4) **State Bank of India and Ors. Vs. Umang Kejriwal and Ors**, reported in *MANU/DK/0019/2024*, for the same proposition.

12. From the reading of these decisions, there is no doubt that Hon'ble Supreme Court in **M/s. SCG Contracts Indian Pvt. Ltd.** case and **M/s. Anvita Auto Tech Works Pvt. Ltd.** case, categorically held that, where there is a provision requiring mandatory filing of a Written Statement within a specific period, the Written Statement should be filed within that specific period. Any delayed filing cannot be entertained. Both the decisions arose out of suits in respect of Commercial Disputes Act.

13. In **Anita Garg and Ors Vs. State Bank of India** reported in *2021 SCC OnLine Del 4311*, the issue was the delayed filing of the Written Statement and Counter Claim in the Original Application. The Bank filed an Application for striking off the Written Statement and Counter Claim in IA 2690/2019 and the same was dismissed. In Appeal, the DRAT set aside the order in IA 2690/2019 and directed that the Written Statement and Counter Claim be taken off the record. The reason is that Section 19 (5) (i) of the RDB Act, 1993, limits the discretion of the DRT to extend the time for

filing Written Statement and Counter Claim by 30 + 15 days. To draw this conclusion, the Hon'ble High Court of Delhi referred to the decision of **SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited**, reported in *(2019) 12 SCC 210*, wherein Hon'ble Supreme Court, while considering Order VIII Rule 1 CPC and Order V and Rule 1, as amended for suits relating to commercial disputes by Act 4 of 2016, held that if the Written Statement is not filed within 120 days, 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 and the requirement to file the Written Statement within 120 days is mandatory and not directory. This proposition was applied to Section 19 (5) (1) to come to the conclusion that the Written Statement has to be filed within a period of 30 days and, in exceptional cases and for special reasons, the 30 days period may be extended by another 15 days, and it is mandatory. It was held further that, though there is no specific provision in Section 19 that, in the event of not filing the Written Statement within 45 days, the Defendant would

forfeit the right to file the Written Statement, Section 19 leads to the same conclusion that, if the Written Statement is not filed within 30 + 15 days and the Defendant loses the right to file the Written Statement, and it has to be taken off the record.

14. However, in a recent decision of the Hon'ble High Court of Punjab and Haryana in **Shri Shri Ram Gupta and Ors. Vs. DRAT and Ors.**, in *CWP-26365/2019* and **M/s. Triveni Knits Pvt. Limited and Ors., Vs. DRT and Ors.**, in *CWP-25611/2022*, the Hon'ble High Court dealt with Section 19 of the RDB Act, 1993, on par with Order VIII Rule 1 CPC and, relying on the decision in the *Salem Advocate Bar Association*' case, that Order VIII Rule 1 is directory and not mandatory, observed that, since the provisions contained in Section 19 of the RDB Act, 1993 read in consonance with Order VIII Rule 1 CPC, are now settled to be directory in nature and not mandatory one, therefore, the action of the Presiding Officer DRT-III, Chandigarh, in striking off the defence in OA-2633/2018 and not accepting the Written

Statement already filed, is the result of a hyper-technical approach/ haste, and held unsustainable in the eyes of law.

15. Thus, we have two sets of decisions of the Division Benches of the Hon'ble High Court of Delhi and the Hon'ble High Court of Punjab and Haryana with regard to the interpretation of Section 19 (5) (1) of the RDB Act, 1993, as to whether it is directory or mandatory. In applying the ratio of conflicting decisions of superior courts, the Courts have to apply the decision which fits to the facts and circumstances of the case on hand and more appropriate. At the same time, it should also be taken into account that, in the case of conflicting decisions between two Benches of equal strength, the later decision of the Bench will prevail.

16. Be that as it may. In **M/s. SCG Contracts Indian Pvt. Ltd.** case, the first Defendant was served in the Suit on 14.07.2017. 120 days for filing Written Statement ends with 11.11.2017. However, the first Defendant had not filed the

Written Statement within 120 days. Instead, filed an Application under Order VII Rule 11 for rejection of the Plaintiff, and that Application was rejected by the Hon'ble High Court, on 05.12.2017. At the request of the Learned Counsel for the first Defendant, seeking seven days' time to file the Written Statement, the Hon'ble Judge granted time till 15.12.2017 for filing Written Statement subject to payment of costs of Rs.25,000/-. The Written Statement was filed on 15.12.2017. Thereafter, the Plaintiff filed an Application on 06.08.2018 protesting the receipt of Written Statement after 120 days, in view of changes made in the civil procedure code. On 24.09.2018, the Hon'ble Judge held that the order passed on 05.12.2017 is final and directed that the Written Statement filed by the first Defendant on 15.12.2017 to be taken on record. Against that order, SLP was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court dealt with the amended provisions of CPC under Order VIII Rules 1 and 10 and precedents, and held that *"Order VIII Rules 1 and 10 are mandatory, and if the Written Statement is not filed within the period of 120 days, the Defendant shall forfeit the*

right to file the Written Statement and court shall not allow the Written Statement to be taken on record. It was also held that the act of court in permitting the filing of Written Statement beyond the period of 120 days, cannot be used in favour of the Defendants when the res is not yet judicata. Finally, it was observed that res judicata cannot stand in the way of an erroneous interpretation of a statutory prohibition.” Thus, allowed the Appeal and Written Statement of the first Defendant was ordered to be taken off record.

17. It is true that in **M/s. Anvita Auto Tech Works Pvt. Ltd.**, the Hon’ble Supreme Court permitted the filing of Written Statement subject to payment of costs of Rs.1 Lakh and to exercise the right of cross examination of the Plaintiff. However, in this decision, it is reiterated that if Written Statement is not filed within the period of 120 days, the consequence is the forfeiture of the right to file the Written Statement. The concession was given in this case mainly for the reason that the period during which the Written Statement ought to have been filed fell within the exemption

period granted by the Hon'ble Supreme Court, for the purpose of computing the limitation period during Covid 19 pandemic period under any general or special laws in respect of all judicial or quasi judicial proceedings in **Cognizance for Extension of Limitation (2022) 3 SCC 177 in Suo Moto Writ Petition (C) No.3 /2020**. This decision is not helpful to the Appellants because the Written Statement was filed long after the Covid-19 pandemic period, in this case.

18. What is consequence of not filing the Written Statement within $30 + 15 = 45$ days has been dealt with in Rule 12(7) of DRT (Procedure) Rules, 1993. The said Rule reads as follows:-

“12 (7) If the defendant or the applicant as the case may be, fails to file the reply as specified above, the Tribunal may proceed forthwith to pass an order on the application as it thinks fit.”

19. The order of the Learned Presiding Officer reads that the Defendants entered appearance on 09.07.2019 itself by filing Vakalat through Counsel in OA 252/2019. They have 30 days for filing the Written Statement from 09.07.2019 and 15 days thereafter if they are able to show exceptional and special circumstances. Admittedly, Written Statement was not filed either within 30 days or within 45 days. Legal requirement is to pass orders as required under Rule 12 (7) of DRT (Procedure) Rules, 1993, in the Application as the Tribunal thinks fit. That is, the Tribunal can either allow the Original Application if the Bank is able to prove its claim or it can dismiss the claim of the Bank, if the Bank is not able to prove the claim. Unfortunately, no order was passed by the Tribunal under Rule 12(7) of DRT (Procedure) Rules, 1993.

19.1 Instead, from 09.07.2019, the matter was reposted to 21.10.2019; then from 21.10.2019, it was reposted to 20.02.2020 to 08.03.2022, at least for five hearings by the Registrar, DRT, without placing the OA for orders before the

Learned Presiding Officer under Rule 12(7) of DRT (Procedure) Rules, 1993.

19.2 The matter was listed before Learned Presiding Officer for the first time only on 15.12.2022. Even on 15.12.2022, the Learned Presiding Officer, did not pass any order under Rule 12(7) of DRT (Procedure) Rules, 1993, and instead, graciously granted time till 09.06.2023 for filing the Written Statement by extending time, from time to time, on the following dates i.e., 09.05.2023 and 30.05.2023. It is an admitted fact that the Respondent Bank also not raised any objection for the delayed filing of Written Statement on 09.06.2023. It proceeded to file Proof Affidavit on 21.09.2023 and no objection was taken before the Tribunal with regard to delayed filing of the Written State till the OA was allowed on 02.05.2024.

20. The decision referred above in **M/s. SCG Contracts Indian Pvt. Ltd. Vs. K. S. Chanmankar Infrastructure Pvt. Ltd. & Ors.**, shows that the delayed filing of Written

Statement was agitated against immediately on its receipt. That is not the case here. MA 23/2026 was filed objecting the delayed filing of the Written Statement, only after the remand order was passed in CRP No.2514/2024. Prior thereto, the OA was allowed by the Learned Presiding Officer, of course, without properly considering the pleadings and evidence produced by both the parties, on 02.05.2024.

21. The question now looms large is whether the Respondent Bank can challenge the delayed filing of Written Statement after tacitly admitting the delayed filing of the Written Statement and participating in the enquiry on the basis of the Written Statement filed with delay and without raising this issue before the Hon'ble High Court in CRP No.2514/2024? This Tribunal is of the view that the Respondent had lost its right to challenge the delayed filing of the Written Statement on the principles of acquiescence, waiver and *estoppel*. It is no doubt that there can be no waiver/*estoppel* against a statute. However, the conduct of the Respondent in not challenging the delayed filing of the

Written Statement from 09.06.2023 till the filing of MA 23/2026, is highly belated and is hit by acquiescence. A party, who knowingly participates in the proceedings without raising objection, forfeits his right to challenge the procedural irregularities at a later stage.

22. In dealing with the issue of granting time for filing the Written Statement by Appellants by the Learned Presiding Officer beyond 45 days, the conduct of the Appellants in not raising the issue earlier and before the Hon'ble High Court in CRP No.2514/2024, and whether it amounts to waiver, *estoppel*, abandonment and acquiescence?, the Learned Presiding Officer held that, the Hon'ble High Court directed the DRT to decide the OA afresh and in accordance with law, therefore, not raising the issue relating to the statutory timelines for receiving the Written Statement at the relevant point of time, even if held as a concession, would not confer judicial power or authority on the Tribunal to extend the statutory timeline, in view of the statutory proposition that there is no *estoppel* against a statute and the earlier order of

Learned Presiding Officer in receiving the Written Statement would not operate as *res judicata*.

23. Learned Presiding Officer also referred to the **M/s. SCG Contracts Indian Pvt. Ltd.** case, to reach a conclusion that, when the Tribunal is directed to consider the OA 252/2019 afresh and in accordance with law, Tribunal is not rendered powerless to interpret the provisions to consider the legality of the belated filing of Written Statement.

24. As already stated in the **M/s. SCG Contracts Indian Pvt. Ltd.** case, the non filing of the Written Statement within the period of 120 days was challenged immediately, especially, prior to the disposal of the main suit. On the other hand, in the case before hand, the belated filing of the Written Statement was not challenged before the Tribunal till OA was disposed of on 02.05.2024. Even in CRP No. 2514/2024 before Hon'ble High Court, this issue was not raised. Only after remand, the MA 23/2026 was filed and

allowed. Certainly, the principles of waiver, acquiescence, *estoppel* by conduct applies to the Respondent.

24.1 The Oxford dictionary defines the word 'waiver' as an act of waiving a right or claim i.e. the voluntary relinquishment or surrender of a known right or privilege. The Oxford dictionary defines the word 'acquiescence' as acceptance of something without protest. The word '*estoppel*' denotes a principle which precludes a person from asserting something contrary to what is implied by the previous act or statement of that person, or by a previous pertinent judicial determination.

25. Waiver is an intentional relinquishment of known right. In **Kanchan Udyag Limited Vs. United Spirits Limited** in *Civil Appeal No. 1168/2007*, the Hon'ble Supreme Court while dealing with the principles of waiver and acquiescence in paragraph 22, held that waiver and acquiescence may be express or implied. Much will again depend on the nature of the contract, and the facts of each case. Waiver involves

voluntary relinquishment of a known legal right, evincing awareness of the existence of the right and to waive the same. If a party entitled to a benefit under a contract, is denied the same, resulting in violation of a legal right, and does not protest, foregoing its legal right, and accepts compliance in another form and manner, issues will arise with regard to waiver or acquiescence by conduct. For better appreciation, relevant portions are extracted hereunder:-

“22.....Waiver and acquiescence may be express or implied. Much will again depend on the nature of the contract, and the facts of each case. Waiver involves voluntary relinquishment of a known legal right, evincing awareness of the existence of the right and to waive the same. The principle is to be found in Section 63 of the Act. If a party entitled to a benefit under a contract, is denied the same, resulting in violation of a legal right, and does not protest, foregoing its legal right, and accepts compliance in another form and manner, issues will arise with regard to waiver or acquiescence by conduct. In the facts of the present case, the conduct of the appellant in placing orders and receiving supply of concentrates directly from M/s. VEC, for a period of nearly one year, and continuing to do so even after it

wrote to the respondent in this regard, without recourse to any legal remedies for denial of its legal right to receive concentrates from the respondent, undoubtedly amounts to waiver by conduct and acquiescence by it to the new arrangement. The plea that it was done under compulsion, and not voluntarily, is devoid of any material, substance and evidence. It is unacceptable and merits no consideration. Alternatively, if it was an assignment under Clause 5 of the agreement, there had been no termination of the contract by the respondent. Waiver by conduct was considered in P. Dasa Muni Reddy vs. P. Appa Rao, (1974) 2 SCC 725, observing as follows

“13. Abandonment of right is much more than mere waiver, acquiescence or laches.....Waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. Waiver can also be a voluntary surrender of a right. The doctrine of waiver has been applied in cases where landlords claimed forfeiture of lease or tenancy because of breach of some condition in the contract of tenancy. The doctrine which the courts of law will recognise is a rule of judicial policy that a person will not be allowed to take inconsistent position to gain advantage through the aid of courts. Waiver sometimes partakes of the nature of an election. Waiver

is consensual in nature. It implies a meeting of the minds. It is a matter of mutual intention. The doctrine does not depend on misrepresentation. Waiver actually requires two parties, one party waiving and another receiving the benefit of waiver. There can be waiver so intended by one party and so understood by the other. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. The voluntary choice is the essence of waiver. There should exist an opportunity for choice between the relinquishment and an enforcement of the right in question.....”

26. In **Bichitrananda Behera Vs. State of Orissa and Ors.** in 2023 INSC 902, the Hon’ble Supreme Court discusses the concept of acquiescence, delay and latches as follows :-

“25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to

continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

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.....

13) “12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows: ‘In determining whether there has been such delay as to amount to laches, the chief points to be considered are: (i) acquiescence on the claimant's part; and (ii) any change of position that has occurred on the defendant's part. Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded

as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

It is no doubt that the Respondent, though had the right to protest the receipt of the Written Statement immediately, or at least prior to the disposal of the OA, on 02.05.2024, and by raising the issue during hearing of CRP No. 2514/2024, failed to do that. Only after the remand, the Respondent filed MA 23/2026. From the proposition laid down on the principles of waiver and acquiescence in the aforesaid decisions, this Tribunal is of the view that, the Respondent lost the opportunity of protesting of the late filing of the Written Statement on the principles of acquiescence by conduct and wavier.

27. One another important issue is that the Hon'ble High Court in CRP No. 2514/2024, set aside the order passed in OA 252/2019 on 02.05.2024 and remanded the case for consideration afresh and in accordance with law. What is the stage from which the Tribunal has to commence the proceedings after remand?

28. Learned Counsel for the Appellants submitted that the Tribunal has to commence only from the stage of enquiry after filing of Proof Affidavit and Counter Proof Affidavit. Learned Counsel for the Respondent submitted that when the remand order is not a restricted order and the lower court is directed to consider afresh all contentions raised by the parties, it is wide open to the lower court to consider all the issues that is necessary to meet the ends of justice. Reference is drawn to the decision of the Hon'ble High Court of Bombay (Aurangabad Bench) in **Laxman Bapu Berad vs Sudhakar Nanasaheb Jawale** , reported in *MANU/MH/0117/1998*, in support of this proposition.

29. To understand the scope of remand, it is required to extract the relevant portion of the remand order :-

“2. The order dated 02.05.2024 passed by the Debts Recovery Tribunal in O.A.No.249 of 2019 is assailed mainly on the ground that though the petitioners raised various issues and tenable grounds to challenge the action of the respondent bank, as detailed in the original application, the Tribunal has passed a perfunctory order and has not taken into consideration any of the grounds raised by the petitioners in their defence and the original application filed by the secured creditor/bank has been allowed in a most mechanical fashion, without any application of mind and without any speaking order, as reflected from the order itself. Attention of this Court is drawn to the observation made by learned Tribunal in paragraphs 8, 9 and 10 of the impugned order.

3. Learned counsel for the respondent would concede to this factual position placed on record and is unable to support the impugned order.

4. Concededly, the order impugned is apparently non-speaking and does not decide the issue raised before it on the basis of various defences raised by the petitioners.

We may usefully extract the relevant part of the order of the Tribunal as below:

8.....

9....

.....

.....

5. A perusal of the above clearly shows that the Tribunal has not applied its mind and by a complete non-speaking order, original application filed by the bank has been allowed.

6. Since the respondent has conceded to the aforesaid position, this petition stands allowed. The order passed by the Tribunal is set aside and the case is remanded for consideration afresh and in accordance with law. The Tribunal shall do well to decide the matter within an outer limit of two months.”

30. As per this remand order, the grounds for assailing the order in O.A. No. 252/2019 are:

- i. Appellants raised various issues and tenable grounds to challenge the action of the Bank;

- ii. Tribunal passed a perfunctory order and has not taken into consideration any of the grounds raised by the Appellants in their defence;
- iii. Original Application has been allowed in a most mechanical fashion, without any application of mind and without speaking order;

During the hearing in CRP No. 2514/2024, the Learned Counsel for the Respondent conceded to this factual position and was not able to support the impugned order. The Hon'ble High Court held that the impugned order is a non-speaking order and does not decide the issue raised before it on basis of various defences raised by the Appellants and thus set aside the impugned order and remanded the case for consideration afresh and in accordance with law.

31. Where an appellate court sets aside the judgment and decree of the trial court and remands the matter for fresh consideration, in accordance with law, the stage from which

the trial court should proceed depends upon the terms of the remand order. When the appellate court merely sets aside the judgment for the reason that the trial court failed to consider the defence or failed to decide the issues properly, and remands the matter for fresh disposal, the remand ordinarily revives the suit to the stage at which the error occurred. If pleadings are complete, issues have been framed, evidence has been recorded, and appellate court has not directed fresh evidence, the trial court should normally proceed from the last stage of hearing, and dispose the case after considering the entire evidence and defence. In **P. Purushottam Reddy Vs. Pratap Steels Ltd.** reported in (2002) 2 SCC 686 , the Hon'ble Supreme Court held that where evidence is already on record, a wholesale retrial should not be ordered unless necessary. It is held in **Vinod Kumar v. Gangadhar**, (2015) 1 SCC 391 by the Hon'ble Supreme Court that the remand does not automatically wipe out all earlier proceedings unless the order expressly or by necessary implication requires a fresh trial. In **Mohanlal Goenka v. Benoy Kishna Mukherjee**, AIR 1953 SC, Hon'ble Supreme Court held that

the trial court is bound by the terms of the remand and cannot travel beyond them. In the case before hand, the remand order shows that the Hon'ble High Court has taken cognizance of the pleadings of the parties, particularly the Written Statement filed by the Appellants and the various defences taken by the Appellants in the Written Statement and its non-consideration by the Tribunal while passing the impugned order in O.A. No. 252/2019.

32. It is apparent and can be presumed that the Hon'ble High Court directed the Tribunal to decide the matter afresh and in accordance with law, on the basis of the pleadings already raised in the OA and the Written Statement and the documents filed in support of the pleadings. From the decisions aforesaid, it can be gathered that, the trial court cannot extend the scope of remand and start from a stage prior to the stage where the mistake occurred. Here in this case, as per the order of remand, the mistake occurred in not considering the defences taken by the Appellants in their Written Statement. Therefore, the direction of the Hon'ble

High Court in CRP No. 2514/2024 to decide the case afresh and in accordance with law, cannot be extended to the enquiry on the belated filing of the Written Statement. This Tribunal is of the view that the finding of the Learned Presiding Officer that the Tribunal can also decide the issue of belated filing of the Written Statement after remand, is misconceived, beyond the scope of remand order, and cannot be accepted, especially, in this case where the delayed filing of Written Statement was not raised before DRT from 09.06.2023 to 02.05.2024 and not raised during the pendency of CRP No. 2514/2024 before Hon'ble High Court.

33. It is also to be borne in mind that, instead of listing the case for hearing, the Registrar mechanically reposted the case for several hearings. Had the case been posted before the Tribunal immediately after appearance of the parties, the Tribunal would have passed an order under Rule 12(7) of the DRT (Procedure) Rules, 1993, for non filing of Written Statement. This Tribunal further finds that the Learned Presiding Officer had also granted extension of time for filing

of the Written Statement beyond 45 days. The Registrar, the Tribunal and the Defendants/Appellants had contributed to the delayed filing of the Written Statement.

33.1 Thus, this Tribunal finds that the filing of MA No. 23/2026 after the remand order was passed in CRP No. 2514/2024, is hit by the principles of waiver and acquiescence by conduct on the part of the Respondent. Without considering these aspects, the Learned Presiding Officer allowed MA 23/2026, and that order cannot be sustained for the reasons aforesaid. As a consequence, the impugned order is aside and this Appeal is allowed. The Learned Presiding Officer, DRT, Coimbatore, is directed to dispose of the OA 252/2019 as directed by the Hon'ble High Court of Madras, within the timeline stipulated.

34. In the result, the order passed in MA 23/2026 in OA 252/2019, by the Learned Presiding officer, DRT, Coimbatore, is set aside. The Appeal in MA 49/2026 is allowed. All pending IAs, if any, stand closed. Both parties shall bear their own costs.

[Dictated to Athistamani, PS, transcribed by her, corrected and signed by me this 23rd of June, 2026]

[Justice G. Chandrasekharan]
CHAIRPERSON