IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 1389 of 2025
IA No. CAN 1 of 2025

IDFC First Bank Limited And Another
Vs.
Shyamsundar Distributor And Another

For the appellants	:	Mr. Ranjit Singh, Adv. Mr. Shounak Mukhopadhyay, Adv. Mr. Amar Singh, Adv. Mrs. Tutul Das, Adv. Ms. S. Mukherjee, Adv.
For the respondents	:	Mr. Ejaz Khan, Adv. Mr. Pradip Kumar De, Adv. Mr. Debnath Mahata, Adv.
Hearing concluded on	:	05.05.2026
Judgment on	:	18.05.2026

Md. Shabbar Rashidi, J.:-

1. Order No. 12 dated July 10, 2025 passed by learned Judge, Vth Bench, City Civil Court in Title Suit No. 2334 of 2023 has been

assailed in the present appeal at the behest of the defendant in the suit.

2. By the impugned order, the learned Trial Court dismissed the application under Section 5 and Section 8 of Arbitration and Conciliation Act, 1996 filed on behalf of the defendant in the suit on the ground that the same was filed by the defendant beyond the period of limitation prescribed for filing written statement. By the impugned order, the learned Trial Judge, on account of failure of the defendant/appellant in submitting his written statement, also struck off the defence of appellant in the suit with an exception of right to cross-examine the witnesses, to be produced on behalf of the plaintiff/respondent.

3. It was submitted on behalf of the appellant that the learned Trial Judge failed to appreciate that the disputes covered under T.S. No. 2334 of 2023 were squarely covered under arbitration agreement dated March 31, 2018 duly executed by and between the parties. The agreement dated March 31, 2018 contained a valid arbitration clause and therefore, the disputes ought to have been referred to arbitration as per the terms of the loan agreement. According to learned advocate for the appellant, the learned Trial Court was under obligation to refer the parties to arbitration on the basis of a valid arbitration agreement existing between the parties.

4. Learned advocate for the appellant also submitted that the civil suit was filed by the plaintiff/respondent in an attempt to defeat the legitimate claim of the appellant/defendant overlooking the arbitration agreement. It was also contended by learned advocate for the appellant that the learned Trial Court, while passing the impugned order, did not take into consideration the fact that by orders dated April 10, 2024, June 14, 2024 and August 21, 2024, the learned Trial Judge had itself extended the time to file a written statement in terms of the provisions of Order VIII of the Code of Civil Procedure, 1908.

5. Learned advocate for the appellant also contended that the learned Trial Judge did not consider that the application under Section 5 and 8 of the Act of 1996 was filed prior to filing of the first statement on the substance of disputes i.e. a written statement. It was further submitted that the learned Judge did not consider that by its order dated March 6, 2025 the suit was taken off from the ex parte board and thereby providing the appellant an opportunity to present its case by filing a written statement in the suit. If that be so, by no stretch of imagination it can be said that the appellant/defendant had waived his right to file written statement. According to learned advocate for the appellant, there was no embargo upon the court to extend the period of limitation for filing a written statement if delay in filing such written statement is explained by sufficient reasons.

6. In support of his contentions, learned advocate for the appellant placed reliance upon ***2023 SCC OnLine Mad 1684 (G.T.L. Infrastructure Limited (GIL) Vs. Amaladoss)***, ***(2011) 5 Supreme Court Cases 532 (Booz Allen and Hamilton INC Vs. SBI Home Finance Ltd.)***, ***2024 SCC OnLine SC 4082 (PIC Departmentals Pvt. Ltd. Vs. Sreeleathers Pvt. Ltd.)***, unreported decision of Karnataka High Court in ***Commercial Appeal No. 457 of 2024 (M/s SJR Prime Corporation Pvt. Ltd. & Anr. Vs. Shri P. Shubakar) and (2020) 2 Supreme Court Cases 708 (Desh Raj Vs. Balkishan)***.

7. On the other hand, it was the contention of the learned advocate for the respondent/plaintiff that the appellants filed the application under Sections 5 and 8 of the Act of 1996 belated and definitely after the expiry of the time period prescribed for filing of written statement in terms of the provisions of Order VIII of Civil Procedure Code. According to learned advocate for the respondent, such an omission on the part of appellant/defendant amounts to waiver of his right to file written statement.

8. Learned advocate for the respondent also submitted that the time to present an application under Section 8 of the Act of 1996 by the appellant cannot be extended indefinitely if the defendant failed and neglected to submit his written statement within the specified time schedule. It was also contended that for non-filing of the written statement in the suit, by the appellant/defendant, the suit was fixed

for ex parte hearing. The suit was later taken off from ex parte board at the behest of the appellant providing him an opportunity to file his written statement. This, according to learned advocate for the respondent, was a special opportunity afforded to the appellant and cannot be construed to mean a fresh period prescribed under the provision of Order VIII of the Code of 1908.

9. According to learned advocate of the respondent, the learned Trial Court rightly refused to refer the disputes to arbitration and rejected the application under Sections 5 and 8 of the Act of 1996.

10. In support of his contentions, learned advocate for the respondent relied upon ***(2018) 15 Supreme Court Cases 678 (Ameet Lalchand Shah & Ors. Vs. Rishabh Enterprises & Anr.)***, ***2020 SCC OnLine Del 1667 (SSIPL Lifestyle Pvt. Ltd. Vs. Vama Apparels (India) Pvt. Ltd.)***, ***2024 NCKHC 51347 (Sri. Thangavelu. R Vs. Shri Santosh. J & Ors.)***, ***2025 SCC OnLine Bom 1133 (State Bank of India Vs. Surya Pharmaceuticals Ltd.)***, ***2025 SCC OnLine Del 1042 (Hitachi Payments Services Pvt. Ltd. & Anr. Vs. Shreyans Jain & Anr.)***, ***(2005) 4 Supreme Court Cases 480 (Kailash Vs. Nankhu & Ors.)*** and ***(2011) 5 Supreme Court Cases 532 (Booz Allen and Hamilton INC Vs. SBI Home Finance Ltd.)***.

11. The respondent and another Anupam Pal, the partners, obtained a business loan of ₹20,40,000/- from one pre-merger agency of the appellant on April 3, 2018. The parties entered into an

agreement in this regard wherein the respondents/plaintiff agreed to repay the loan in 36 monthly instalments of ₹1,05,323/- each commencing from May 2, 2018. Accordingly, a sum of ₹19,89,159/- was disbursed by the appellant towards the loan after deducting the administrative charges.

12. During the continuance of the loan agreement, the respondent went on paying the due instalments. They however, applied for premature foreclosure of loan account on several occasions and asked for the terms and conditions of such foreclosure. Thereafter, in terms of the terms and conditions of the loan agreement dated April 3, 2018, the respondents paid a sum of ₹12,84,813.98/- towards the full and final settlement of loan amount. Such payment was duly communicated to the appellant/defendant by an email message on January 16, 2019 seeking foreclosure of the loan account of the respondent/plaintiff.

13. By an email message dated February 13, 2019, the appellant/defendant communicated and annexed a foreclosure letter in favour of the respondent/plaintiff claiming a sum of ₹14,38,469.39/- towards foreclosure amount. The representation preferred by the respondent/plaintiff against such foreclosure claim of the appellant/defendant was not paid any heed to. Therefore, the respondent/plaintiff brought Title Suit No. 2334 of 2023 against the appellant/defendant seeking declaration and permanent injunction.

14. Although, the date of filing of the suit and date of service of summons has not been recorded in the impugned order, nevertheless, the learned Trial Court noted that the appellant/defendant appeared in the suit on April 10, 2024. Therefore, the date of reckoning, for the purposes of Order VIII of the Code of 1908 was taken as April 10, 2024. The defendant/appellant did not choose to file written statement until March 6, 2025 i.e. 11 months after his first appearance in the suit. The appellant/defendant came up with an application under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 on March 6, 2025, which according to learned Trial Court, was much beyond the period prescribed for filing of written statement in terms of the provisions of Order VIII Rule 1 of the Civil Procedure Code, 1908.

15. According to learned Trial Court, filing of written statement by a defendant is the filing of first statement of defence as contemplated under Section 8 of the Act of 1996. The appellant/plaintiff having failed to put in his statement of defence despite being provided with ample opportunities, the petition under Sections 5 and 8 of the Act of 1996 was filed beyond the prescribed period which amounted to waiver of his rights under Section 8 of Arbitration and Conciliation Act, 1996. On such score, by the impugned order, the learned Trial Court proceeded to reject the application under Sections 5 and 8 of

the Arbitration and Conciliation Act, 1996 filed on behalf of the appellant.

16. In order to adjudicate upon the matter in controversy, it would be apposite to consider the provisions Section 8 of Arbitration and Conciliation Act, 1996 which reads thus,

> *"8. Power to refer parties to arbitration where there is an arbitration agreement.—(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him,* ***so applies not later than the date of submitting his first statement on the substance of the dispute,*** *then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*
>
> *(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:*
>
> *Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.*
>
> *(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the*

judicial authority, an arbitration may be commenced or continued and an arbitral award made."

[Emphasis supplied]

17. The dispute herein revolves around the phrase 'not later than the date of submitting his first statement on the substance of the dispute' used in Section 8 of the Act of 1996. According to the findings arrived at in the impugned order, the appellant failed to submit his first statement on the substance of dispute i.e. his written statement within the time prescribed under Order VIII of the Civil Procedure Code, 1908 which, according to learned Trial Court amounted to waiver of the rights on the part of the appellant under Section 8 of the Act of 1996.

18. However, according to the case made out by the appellant/defendant, time to file written statement had though, already elapsed but the plaintiff/appellant approached the Trial Court and on his prayer such time was extended. It was contended that since the time to file written statement was extended by the Trial Court, time to exercise its rights under Section 8 of the Act of 1996 also stood extended and therefore, learned Trial Court was not justified in refusing the prayer of the appellant to refer the disputes to arbitration. It is evident that the application under Sections 5 and 8 of the Act of 1996 was filed by the appellant after about 11 months of his first appearance in the suit.

19. In accordance with the provisions of Order VIII Rule 1 of the Civil Procedure Code, 1908, a written statement is required to be filed within 30 days which is extendable up to 90 days. It is also established law that the provision that the time to file written statement may be extended till 90 days is directory in nature. The Courts may, in exceptional circumstances, allow such extension even beyond the stipulated 90 days but in order to avail such extension, the defendant is obliged to establish strong and sufficient cause. Apparently, by the impugned order, the learned Trial Court not only rejected the application under Section 8 of the Act of 1996 filed on behalf of the appellant but at the same time struck off his defence in view of non-filing of written statement within the prescribed time period.

20. In ***GTL Infrastructure Limited*** (supra), the application under Section 8 of the Arbitration and Conciliation Act was filed by the defendant along with the written statement. The Madras High Court noted in the judgment that,

> *"26. Therefore, it is clear that once an application under Section 8 of the Arbitration and Conciliation Act is filed, the civil Court should first see that whether there is ouster of jurisdiction in terms special statute namely the Arbitration and Conciliation Act 1996. In the present case, the trial Court has proceeded to hold that Section 8 application under Arbitration and Conciliation Act has been filed belatedly relying upon the Judgment of the Hon'ble Supreme Court*

reported in (2019) 12 SCC 210 (SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Limited) which arises out of a commercial suit. Further, the trial Court has erroneously interpreted Section 8 of the Arbitration Act to hold that Section 8 application cannot be filed along with the written statement. The existence of the sale agreement and arbitration clause in the said agreement are admitted by both the parties. Therefore, this Court ought to have referred the matter to the Arbitration without relying upon the delay on the part of the defendant in filing an application under Section 8 of the Arbitration Act. Once the existence of a valid arbitration agreement is brought to the notice of the Court, the Court has no discretion whatsoever except to refer the matter for Arbitration.

27. In the present case, no extraordinary circumstances have been pointed out by the Civil Court to exercise its jurisdiction ignoring the arbitration clause.

28. In view of the above said deliberations, the order impugned in the revision petition is set aside. This Civil Revision Petition is allowed. It is declared that the civil Court has no jurisdiction to entertain O.S. No. 252 of 2021 and the parties are at liberty to pursue their remedy under Arbitration and Conciliation Act 1996. No costs. Consequently, connected miscellaneous petition is closed."

21. However, in ***Booz Allen and Hamilton INC*** (supra) it was observed that filing of first statement of defence is linked to unambiguous intention of the defendant to submit to the jurisdiction of the Court. Mere filing of other pleadings like written objection to an application for injunction or ancillary proceedings cannot be

construed to the statement of defence on the part of the defendant. The Hon'ble Court thus held that,

> *"30. When the plaintiffs file applications for interim relief like appointment of a Receiver or grant of a temporary injunction, the defendants have to contest the application. Such contest may even lead to appeals and revisions where there may be even stay of further proceedings in the suit. If supplemental proceedings like applications for temporary injunction on appointment of Receiver, have been pending for a considerable time and a defendant has been contesting such supplemental proceedings, it cannot be said that the defendant has lost the right to seek reference to arbitration. At the relevant time, the unamended Rule 1 of Order 8 of the Code was governing the filing of written statements and the said rule did not prescribe any time-limit for filing written statement. In such a situation, mere passage of time between the date of entering appearance and date of filing the application under Section 8 of the Act, cannot lead to an inference that a defendant had subjected himself to the jurisdiction of the court for adjudication of the main dispute.*
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> *31. The facts in this case show that the plaintiff in the suit had filed an application for temporary injunction and appointment of Receiver and that was pending for some time. Thereafter, talks were in progress for arriving at a settlement out of court. When such talks failed, the appellant filed an application under Section 8 of the Act before filing the written statement or filing any other statement which could be considered to be a submission of a statement on the substance of the dispute. The High Court was not therefore justified in rejecting the application on the ground of delay."*

22. In the case at hand, nothing has been placed before us that the suit filed by the respondent involved any supplemental proceeding causing delay in filing the written statement within the prescribed time. The appellant/defendant simply did not appear in the suit and took almost 11 months in filing the application under Section 8 of the Act of 1996 without filing his written statement. On such score, the defence of appellant/defendant was ordered to be struck off by the Trial Court.

23. Furthermore, in ***Booz Allen and Hamilton INC*** (supra), the Hon'ble Supreme Court also held that the suit in the said case, involved disputes with regard to mortgage which could not be decided by arbitration and upheld the rejection of application under Section 8. It was noted that,

> *"51. If the three issues referred by the appellant are the only disputes, it may be possible to refer them to arbitration. But a mortgage suit is not only about determination of the existence of the mortgage or determination of the amount due. It is about enforcement of the mortgage with reference to an immovable property and adjudicating upon the rights and obligations of several classes of persons (referred to in para 48.2 above), who have the right to participate in the proceedings relating to the enforcement of the mortgage, vis-à-vis the mortgagor and mortgagee. Even if some of the issues or questions in a mortgage suit (as pointed out by the appellant) are arbitrable or could be decided by a private forum, the issues in a mortgage suit cannot be divided. 53. Having regard to our finding on Question (iv) it has to be held that the suit being*

> *one for enforcement of a mortgage by sale, it should be tried by the court and not by an Arbitral Tribunal. Therefore we uphold the dismissal of the application under Section 8 of the Act, though for different reasons."*

24. The suit involved in the present appeal involves similar issues as that in ***Booz Allen and Hamilton INC*** (supra). The disputes involved in such suit relates to a loan agreement between the appellant and the respondent.

25. In ***PIC Departmentals (P) Ltd.*** (supra), the Hon'ble Supreme Court upheld the discretion exercised by learned Court in favour of the defendant in view of the fact that the defendant failed to submit his written statement in the suit owing to an erroneous reporting in the official website of the High Court which put the defendant under an impression that the suit was disposed of. At the same time, the Hon'ble Supreme Court laid down that,

> "15. *Learned senior counsel for the appellant is correct that the power to extend time for filing Written Statement should not be employed as a matter of course, but with great caution so that the purpose of the procedural statute is not defeated and unscrupulous litigants do not abuse the process of the Court by adopting dilatory tactics. However, the same cannot be examined in a strait-jacket/sealed compartment for the peculiar facts and circumstances of every case have to be carefully and individually appreciated. Thereafter, the Court concerned has to take a call as to whether the request made is genuine or, more importantly, whether refusal to accede to such request may lead to an eventual miscarriage of justice. It*

must not be lost sight of that ultimately, procedural technicalities have to give way to substantive justice. Procedure, well and truly, is only the handmaiden of justice.7 The discretion granted to Courts has to be exercised on a case-specific basis. Undisputedly, 'procedural laws are primarily intended to achieve the ends of justice and, normally, not to shut the doors of justice for the parties at the very threshold.

16. In the present instance, we find that the sequence of events clearly indicates that the, respondent cannot be said to be solely at fault for as it was under the impression that the suit already stood disposed of and thus, there was no requirement/occasion to file the Written Statement. Admittedly, the case was listed suddenly after a prolonged gap on 17.01.2017, whereafter that the respondent filed an appropriate application. Moreover, the reports dated 25.01.2017 and 11.05.2023 submitted by the Registry of the High Court indicate that (a) the official website of the High Court did indeed state that the suit had been disposed of on 01.03.2000, and; (b) the High Court could not, for reasons best known to it alone, trace out any orders in the file of the suit pre-17.01.2017. Stricto sensu, the situation that prevailed is a direct result of the confusion created by the Registry of the High Court. In this view, it would be improper to not permit the taking on record of the Written Statement of the respondent apropos the suit.

17. We, thus, find that discretion has rightly been exercised by the Division Bench of the High Court in favour of the respondent. We are in agreement with the reasons assigned by the Division Bench for setting aside the learned Single Judge's order dated 12.06.2023.18."

26. In ***M/s SJR Prime Corporation Pvt. Ltd.*** (supra) prescribed time to file written statement was already elapsed. The defendant's application under Order IX Rule 7 was allowed which was never challenged. Time to file written statement was extended several times. Ultimately, on the expiry of last extension, the defendant came up with an application under Section 8 of Arbitration and Conciliation Act, 1996 which was disallowed on the ground that time for filing written statement had already expired. The Karnataka High Court set aside such order of rejection of application under Section 8 as the same was found by the said High Court to have been filed within the extended period for filing written statement more specifically on the last day.

27. ***Desh Raj*** (supra) lays down the considerations to be looked into while considering a prayer for extension of time to file written statement. The Hon'ble Supreme Court observed thus,

> *"14. Let us, therefore, consider whether the appellant has made out a case of exercising such discretionary jurisdiction? The present civil suit had been filed by the respondent for a decree of specific performance of an agreement to sell one floor of an ancestral property located in Devli Village, Delhi and permanent injunction against alienation of the same by the petitioner to third parties. The counsel for the respondent has not contested the non-commercial nature of the dispute, and even independently we are satisfied that the dispute does not fall within the parameters specified under Section 2(c) of the Commercial Courts Act, 2015 and in particular sub-clause (vii), as the immovable property here is not of a nature which is "used exclusively in trade or commerce". Hence, the*

appellant is correct in contending that the High Court overlooked the nature of the dispute and mistakenly applied the ratio of a case rendered in light of a modified version of the Code of Civil Procedure, which would only be applicable to commercial disputes.

15. However, it would be gainsaid that although the unamended Order 8 Rule 1 CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet will and/or to prolong the lis. The legislative objective behind prescription of timelines under CPC must be given due weightage so that the disputes are resolved in a time-bound manner. Inherent discretion of courts, like the ability to condone delays under Order 8 Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay.

16. However, it is clear from the facts on record that numerous opportunities had been accorded to the appellant. He was served on 1-5-2017 and entered appearance through the counsel on 15-5-2017. As per Order 8 Rule 1 CPC, the appellant ideally ought to have filed his written statement by 31-5-2017 and at the very latest by 30-7-2017. In addition to two separate deadlines for filing of the written statement within the 90-day time-frame prescribed by the "original" Order 8 Rule 1, the civil court even post expiry of the 90-day period again gave one last and final opportunity on 18-9-2017 subject to payment of costs of Rs 3000. None of these deadlines were complied with. Even on 11-10-2017, when the court finally closed the appellant's ability to file written statement and struck off his defence from the record, no attempt was made to comply with the process of law."

28. ***Ameet Lalchand Shah*** (supra) noted the amendments in Section 8 of Arbitration and Conciliation Act, 1996 to the effect that (i) the relevant "party" that is entitled to apply seeking reference to arbitration has been clarified/amplified to include persons claiming "through or under" such a party to the arbitration agreement; (ii) scope of examination by the judicial authority is restricted to a finding whether "no valid arbitration agreement exists" and the nature of examination by the judicial authority is clarified to be on a "prima facie" basis; (iii) the cut-off date by which an application under Section 8 is to be presented has been defined to mean "the date of" submitting the first statement on the substance of the dispute; and (iv) the amendments are expressed to apply notwithstanding any prior judicial precedent.

29. However, in the said authority, the Hon'ble Supreme Court considered the arbitrability of disputes with reference to fraud pleaded on the part of the parties. Therefore, the ratio laid down in ***Ameet Lalchand Shah*** (supra) is not attracted in the facts and circumstances of the present case.

30. In ***SSIPL Lifestyle Pvt. Ltd.*** (supra) noted the facts of the case that Summons were issued in the suit on 15th March, 2018 and on 16th May, 2018, time was given for filing of the written statement. On 17th May, 2018, insolvency proceedings were commenced against

Defendant No. 1 before the NCLT which were finally closed on 8th October, 2018. The said High Court held thus,

> *"22. Thus, as per the above decision, in view of the amended language in Section 8, the limitation for filing of the written statement under CPC for non-commercial suits and under the Commercial Courts Act for commercial suits would be applicable for filing of an application under Section 8. In view thereof, the Court concluded that the maximum period would be 90 days for ordinary civil suits and 120 days for commercial suits."*

31. In the instant case, the application under Section 8 of the Act of 1996 appears to have been filed after about 11 months of the first appearance of the appellant/defendant in the suit which is much after the time prescribed under Order VIII Rule 1 of the Civil Procedure Code. The impugned order also demonstrates that the conduct of the appellant in pursuing the suit was such that the learned Trial Court chose to strike off the defence of the appellant for non-submission of written statement.

32. The Karnataka High Court in ***Sri Thangavely. R*** (supra) in connection with a suit involving commercial dispute noted various authorities like ***Booz Allen and Hamilton Corporation*** (supra), ***G.T.L. Lifestyle Limited*** (supra), ***SSIPL Lifestyle Pvt. Ltd.*** (supra)

and many other authorities. It also noted findings of the learned Trial Judge in the facts of such case to the effect that,

> *"in spite of service of summons, defendant No. 2 had failed to appear before court to contest the suit. Furthermore, since the respondent-defendant had failed to contest the suit, the case was posted for commencement of recording plaintiff's evidence on 07.04.2018. The suit however, was restored wide order dated 20.02.2019 and the respondent-defendant No. 2 despite being granted an extension of time to file the written statement, had instead preferred a reference application under section 8 of the Arbitration and Conciliation Act, 1996 on 20.03.2019. A contextual interpretation of the statutory scheme of the Act of 1996, and the prescription of the outer limit of 120 days to file the written statement as contained in Order 8 Rule one of CPC, 1908, and the ratio laid down by the apex court in Booz Allen ((2011) 5 SCC 532), leads us to reasonably conclude that a reference application under section 8 of the Act, 1996 should have been filed within a period of 120 days from the date of service of summons to the defendant, which was long past before 20.03.2019."*

33. Taking note of the aforesaid facts and circumstances of the case as well as the ratio laid down in the aforementioned authorities, the Karnataka High Court held that where the reference application under Section 8 of the Arbitration and Conciliation Act, 1996 was made long after the expiry of the outer limit of 120 days from the date of service of summons, such a reference could not be construed to have been made at the earliest. On such findings, the Karnataka High

Court proceeded to allow the civil revision, setting aside the order allowing the application under Section 8 of the Act of 1996.

34. Similar views were expressed by the Bombay High Court in ***State Bank of India*** (supra). It also noted the authorities in ***SSIPL Lifestyle Pvt. Ltd.*** (supra) and ***Booz Allen and Hamilton Corporation*** (supra). In the facts of said case, which also was in respect of commercial suit, the Bombay High Court held that,

> *"12. The Delhi High Court in the case of SSIPL Lifestyle Private Limited v. Vama Apparels (India) Private Limited (supra) has interpreted the words "the date of" to mean the date of filing the written statement in the Suit and held that the same should be considered as the limitation period for filing an Application under Section 8 of the said Act.*
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> *13. In the said decision it has been held that if the statement of defence is filed by the party that would constitute a waiver of the arbitration clause and that the first statement on the substance of the dispute is the written statement. I agree. That when the time for filing the written statement has expired would also constitute a waiver and that if there was undue delay in filing the application, mandate of filing the reference application at the earliest, the arbitration clause could be deemed waived.*
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> *14. .....*
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> *15. .....*
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> *16. In the facts of the case, the Suit has been filed on 23rd September, 2015. Writ of summons along with the Plaint has been served upon the Defendant on 27th October, 2016. Since this is a commercial Suit, the limitation period of 120 days would be applicable. The 120 days' period has expired on 24th February, 2017. Accordingly, the date of submitting the written*

statement has expired on 24th February, 2017. The interim Application for setting aside the no written statement order statedly has been filed on 8th October, 2024, which is also way beyond the period of 120 days and therefore the arbitration clause in view of Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.3, deemed waived. Therefore, by no stretch of imagination it can be said that this application for reference to arbitration under Section 8 of the said Act is not later than the date of submitting the first statement by the Defendant.

17. In view of the aforesaid discussion, this Application under Section 8 of the said Act as far as prayer Clause (a) is concerned, being time barred deserves to be dismissed and is hereby dismissed, with liberty to the Applicant to take out appropriate application(s) with respect to the other prayers."

35. In ***Hitachi Payments Services Pvt. Ltd. & Anr.*** (supra), the Delhi High Court in the facts of the said case that the Appellants had been duly served with the summons of the suit on 20.07.2023, and being a commercial suit of a specified value, the maximum period for filing the written statement including the period by which the delay in filing the same can be condoned, being 120 days of the receipt of the summons, had expired on 18.11.2023. The right of the Appellants to file the defence was consequently struck off by the learned Trial Court vide Order dated 22.12.2023, dismissed the appeal and held that, the application filed by the Appellants itself was not maintainable, the period for filing of the written statement having expired and, in fact,

the defence of the Appellants having been struck of by the learned Trial Court vide the Order dated 22.12.2023.

36. ***Kailash*** (supra) was rendered in respect of an election petition and laid down that the provisions contained in Order VIII, Rule 1 of the Civil Procedure Code were directory in nature. The Hon'ble Supreme Court laid down the following principles, that's to say:

> *"42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.*
>
> *43. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the court may*

indeed put the defendants on terms including imposition of compensatory costs and may also insist on an affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the court that the prayer was founded on grounds which do exist.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.

45. However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law."

37. In the case at hand, as noted above, the appellant/defendant came up with an application under Section 8 of the Arbitration and Conciliation Act, 1996 after about 11 months of its first appearance in the suit which came to be rejected by the learned Trial Court on the ground that the same was filed much after the expiry of the time prescribed for putting in the statement of defence. The appellant

sought several extensions of time to file its written statement and instead of filing written statement, came up with an application under Section 8 of the Act of 1996.

38. Therefore, in view of the discussions made hereinabove, we find no reason to interfere with the impugned order. The same is hereby affirmed. Accordingly, the instant appeal being **FMA 1389 of 2025** is hereby dismissed. Connected applications, if any, shall also stand disposed of.

39. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

40. I agree.

[DEBANGSU BASAK, J.]