



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 2144 OF 2025 (F)

M/s. Milagre Homes LLP Represented by its ... Petitioner
Partner Mr. Lovely Chanda
Versus

M/s. Santa Monica Star LLP ...Respondent

Mr. Shivraj Gaonkar and Mr Shithil Prabhu Dessai, Advocates for the Petitioner.

Mr. Shivan Desai with Ms Riya Amonkar and Ms. Aishwarya Thorat, Advocates for the Respondent.

CORAM: DR. NEELA GOKHALE, J.

DATE: 25th JUNE 2026

ORAL ORDER:

1. By this petition, the Petitioner seeks to quash and set aside the Order dated 22nd April 2025, passed by the Commercial Court, North Goa, Mapusa, in Commercial Suit No. COMS/24/2024, by which the Respondent's written statement was taken on record, without being accompanied by an application for condonation of delay.

2. Heard Mr. Shivraj Gaonkar, learned Counsel appearing for the Petitioner and Mr. Shivan Desai, learned Counsel appearing for the Respondent. I have also perused the papers with their assistance.

3. The principal argument of Mr. Gaonkar is that the Court mechanically took the Respondent's written statement on record, without adherence to the mandatory procedural requirements under the Code of Civil Procedure, 1908 ('CPC'), as amended by the Commercial Courts Act, 2015 ('**the Act**').

4. Mr. Gaonkar states that he filed a Commercial Suit seeking specific performance of a Development Agreement dated 2nd December, 2023. The Respondent was served on 5th December 2024 and was required to file its written statement within 30 days, i.e., by 4th January 2025. However, instead of filing the written statement, the Respondent filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint. The Respondent filed the written statement on 02nd April 2025, i.e., on the 118th day of service. Mr. Gaonkar says that although the Respondent had filed the written statement within the statutory period of 120 days from the date of receipt of summons, but 30 days after the said date, and had made an application seeking extension of time, no orders were passed on the application seeking extension of time. Moreover, the application seeking an extension of time was not accompanied by any prayer seeking condonation of the delay in filing the written statement. He says that the Commercial Court passed a cryptic, non-speaking order accepting the written statement, without recording any reasons as required under the CPC, as

amended by the Act. He thus states that the impugned Order is without jurisdiction and in violation of the statutory timeline and thus defeats the very objective of the Act. Hence, he prays that the petition be allowed and the Respondent's written statement be discarded from the records of the Commercial Suit.

5. *Per contra*, Mr Shivan Desai reiterated his arguments that although the Respondent failed to file his written statement within the first 30 days from the date of receipt of the summons, he nonetheless placed the written statement on record within 120 days, i.e., within the statutory period provided under the Act. Moreover, the Respondent had made an application before the Commercial Court seeking an extension of time, which the Commercial Court unfortunately failed to decide. In these circumstances, Mr. Desai states that since his written statement has been taken on record by the Commercial Court, it is implied that the Commercial Court had permitted the extension of time application. He submits that a separate condonation of the delay application is unnecessary and merely a technicality.

6. To buttress his contention, Mr Desai has placed reliance on the Order dated 28th April 2026 passed by a coordinate bench of this Court in Writ Petition No. 3514 of 2026. The relevant paragraph numbers. 34, 35, 41 and 42 are reproduced below :

“34. The text of Order VIII rule 1, extracted above, sustains the submission of Mr. Deshmukh. The provisions contained in Order VIII rule 1 read with Order V rule 1 in their application to ordinary suits have been construed to be directory and not mandatory. [Kailash VIs. Nankhu (supra)]. In a given case, if the Court is satisfied that, there was sufficient cause for the Defendant for not filing the written statement within the grace period, the Court may condone the delay and permit the Defendant to file the written statement. However, Mr. Deshmukh is right in his submissions that, the legislative object behind the said prescription cannot be lost sight of and the delay cannot be condoned in routine and mechanical manner. (MIs. R.N.Jadi and Bros. & Ors. V/s. Subhashchandra).

35. The aforesaid principles are required to be applied to the commercial suits, keeping in view the mandate that the Court cannot extend the time beyond 120 days from the date of service of summons, under any circumstances. In my considered view, a little nuanced approach is required to be adopted in a commercial suit, where the defendant seeks condonation of delay between initial 30 days and upto 120 days. A strict rigour which may apply in a ordinary suit for condonation of delay may not be apposite when the Commercial Court condones the delay beyond the initial 30 days and upto 120 days. Since the legislature has designedly used the words "shall be allowed to file beyond the initial 30 days", ordinarily the Court should lean in favour of the condonation of delay within the window period of 31" day to 120 days, albeit after examining the justifiability of the reasons.

...

41. *This propels me to the aspect of the justifiability of the action of the Court in taking the written statement on record on 16 December 2024. It is not a case that the Defendants did not seek extension of time at all. As noted above, 26 September 2024, Defendant Nos. 1 and 2 had applied for extension of time. Learned District Judge has simply granted time without specifying the time within which the written statement was to be filed, as envisaged by the proviso to Order VIII Rule 1. Thereafter, the Presiding Officer did not preside over the Court on two successive dates. Should the defendants be made to suffer the consequences?*

42. *The approach of the Court ought to be informed by the postulate that, ultimately the provisions of Order VIII rule 1 are procedural. Procedure is handmaid of justice. Procedure ought not to be allowed to score a march over the substantive justice, especially where there is substantial compliance with the peremptory procedural requirement. Undoubtedly, in view of the amendments brought about by the Commercial Courts Act, 2015, the time frame in the matter of the filing of the written statement is required to be adhered to scrupulously. However, where it could be demonstrated that the written statement was indeed filed within the time limit of 120 days, the strictness of technicalities may not be permitted to impede the cause of justice. The determination cannot be dehors the realities manifested by the fact-situation of a given case.”*

7. Mr. Desai also placed reliance on an Order passed by the Supreme Court in the matter of **M/s. A P Distributors & Anr. vs. M/s. OK Play India Pvt. Ltd¹**, whereby the decision of the Delhi High Court in **M/S. Ok Play India Pvt Ltd vs. M/s. A P Distributors & Anr.²** was reversed. The Supreme Court has held that the Delhi High Court had taken too technical view in setting aside the Order passed by the Commercial Court directing the acceptance of the written statement filed by the Defendants therein. The Supreme Court observed that a condonation of delay application can be made beyond the period of 120 days, subject to the fact that the written statement is already placed on record within the statutory period of 120 days. In the present case, the written statement was filed and taken on record on the 118th day of summons being received by the Respondent. There is already an application on record seeking an extension of time to file the written statement beyond 30 days. Unfortunately, the said application was not decided by the Court. In these circumstances, especially considering the decisions of this Court as well as the Supreme Court, I am of the view that the Respondent can be permitted to make an application seeking condonation of delay in filing the written statement beyond 120 days, since the written statement is already filed within the statutory period of 120 days.

1 Special Leave Petition (C) No. 9733-9734/2022

2 CM(M) 346/2020 CM APPL.10013/2020 dated 17.08.2021

- 8.** Mr. Desai states that the Respondent will make an application within a period of eight days from today.
- 9.** If such an application is made, the Commercial Court is requested to decide it expeditiously.
- 10.** It is made clear that the condonation of the delay application will be considered retrospectively as being on record on the date on which the written statement was filed by the Respondent and taken on record by the Commercial Court. It is also made clear that if any other applications are pending before the Court, the Court will decide them along with the delay condonation application or thereafter, at its discretion.
- 11.** In view of the aforesaid directions, the Petition is dismissed.

DR. NEELA GOKHALE, J