



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 76 OF 2024

Jimmy Pankajkumar Desai
Versus

... Petitioner

Nadeem Nizamuddin Khan & 2 Ors.

...Respondents

Mr. Jitendra Supekar, Advocate with *Mr. Roger D'Souza, Advocate for the Petitioner.*

Mr. Abhijit Gosavi, Advocate with *Mr. G. Kerkar, Advocate for the Respondent-Accused.*

CORAM: DR. NEELA GOKHALE, J.

DATE: 15th JULY 2026

ORAL ORDER:

1. By this Petition, the Petitioner seeks to quash and set aside the Order dated 6th October 2023, passed by the Commercial Court at Mapusa in Commercial Suit No. 15/2021/A.

2. By the said Order, the Commercial Court allowed the Respondents No. 2 and 3 herein (original Defendants) to file the written statement beyond the statutory period of 120 days by condoning the delay, holding that non-filing of the written statement in time, which was duly affirmed and verified within the extended period of limitation, was not intentional but a mere lapse on the part of the Defendants.

3. The facts of the case briefly reveal that a Commercial Suit was instituted by the Petitioner before the Commercial Court on 9th August 2021. The summons were received by the Respondents No. 2 and 3 on 17th August 2021. By an application dated 28th August 2021, the Respondent Nos. 2 and 3 sought an extension of time to file the written statement beyond the period of 30 days. Accordingly, the Commercial Court allowed the extension application and permitted the Respondents No. 2 and 3 to file their written statements after the expiry of 30 days from the date on which they received the summonses. Thereafter, the Respondents No. 2 and 3 had filed an application under Order VII Rule 11 of the Civil Procedure Code ('CPC'), seeking rejection of the plaint. The said application was dismissed on 8th April 2022.

4. Ultimately, the Respondents No. 2 and 3 filed their written statement on 14th October 2022. Admittedly, the written statement was verified and served on the Petitioner within a period of 120 days of the date of receipt of summons. Nonetheless, despite such service to the Petitioner, the Respondents No. 2 and 3 failed to file the written statement on record of the Suit pending before the Commercial Court within the statutory period of 120 days.

5. By the impugned Order dated 6th October 2023, while condoning the delay in filing the written statement, the Commercial Court held that the rules of procedure are essentially intended to subserve the cause of justice and not to punish the parties in the conduct of proceedings. The written statement was thus allowed to be placed on record. It is this Order that is impugned by the Petitioner before this Court in the present Petition.

6. Heard Mr J. P. Supekar, learned Counsel appearing for the Petitioner and Mr Abhijit Gosavi, learned Counsel appearing for the Respondents No. 2 and 3. None appears for Respondent No. 1, as this Court has not issued notice to Respondent No. 1, being a formal party to the proceedings. The Order impugned before this Court only relates to the written statement of the Respondent Nos 2 and 3.

7. Mr. Supekar, at the outset, relied on the decision of the Supreme Court in the case of **SCG Contracts (India) Private Limited v. K. S. Chamankar Infrastructure Private Limited & Ors.**¹ He submits that the statutory 120-day period expired on 13th January 2022. However, since the Supreme Court in the matter of *Cognizance For Extension of Limitation, In Re*², directed that the period of limitation shall stand

¹ (2019) 12 SCC 210.

² (2022) 3 SCC 117.

excluded from 15th March 2020 till 28th February 2022, notwithstanding the actual balance period of limitation, all persons shall have a limitation period of 90 days from 1st March 2022. The Supreme Court, in the said decision, further directed that in the event the actual balance period of limitation remaining is greater than 90 days, then the longer period shall apply. Mr. Supekar, however, submits that the Commercial Suit was filed during the period when the limitation was suspended and, consequently, the limitation period in the case would commence from 1st March 2022 and end on 28th June 2022. Admittedly, the written statement is filed on 14th October 2022, i.e. much beyond the statutory period of 120 days.

8. In these circumstances, Mr. Supekar says that considering the provisions of the Commercial Courts Act of 2015 (**'Act'**), the written statement could not have been accepted by the Commercial Court beyond the statutory period of 120 days, even calculating the said period by taking into account the exemption for the limitation period granted by the Supreme Court. Consequently, the Order allowing the delay of the condonation application by the Commercial Court is beyond the jurisdiction of the Civil Court and hence untenable. He thus prays that the Petition be allowed.

9. *Per Contra*, Mr Abhijit Gosavi, on the facts, says that the written statement, although admittedly not filed within a period of 120 days, was nonetheless verified and served upon the Petitioner within the statutory period. He says that the concerned Advocate failed to file the written statement in the Court, and the Respondents No. 2 and 3 cannot be allowed to suffer because of the mistake made by the Counsel.

10. *Secondly*, he says that the Order impugned herein is an interlocutory Order. Hence, as per Section 8 of the Act, there is a bar against entertaining a revision application or Petition against an interlocutory Order. In support of his contention, he has placed reliance on the following cases:

***(i) Ashok Kumar Puri & anr. vs. S. Suncon Realtors Private Limited & anr.*³**

***(ii) Black Diamond Trackparts Pvt. Ltd. & Ors. vs. Black Diamond Motors Pvt. Ltd.*⁴**

***(iii) Vaijanath Dayanand Kale & Ors. vs. Nerkar Properties LLP & Ors.*⁵**

***(iv) Span Healthcare Private Limited vs. Vishal Sharma Proprietor*⁶**

***(v) Cognizance For Extension of Limitation, In Re*
(supra)**

3 2021 SCC OnLine Del 5220.

4 2021 SCC OnLine Del 3946.

5 2021 (3) Mh.L.J.

6 2021 SCC OnLine Del 4910.

(vi) Prakash Corporates vs. Dee Vee Projects Limited⁷

(vii) Owners and Parties Interested in the Vessel M.V. Polaris Galaxy vs. Banque Cantonale De Geneve⁸

(viii) Raj Process Equipment & Systems Pvt. Ltd. & Ors. vs. Honest Derivatives Pvt. Ltd.⁹

(ix) Vedanta Limited vs. Global Energy Pvt. Ltd.¹⁰

(x) Nimesh Dilipbhai Brahmbhatt vs. Hitesh Jayantilal Patel¹¹

11. I have heard both Counsel representing their respective parties and gone through the record with their assistance.

12. The Commercial Courts Act, 2015 came into force on 23rd October 2015, bringing in their wake certain amendments to the CPC. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted.

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

7 (2022) 5 SCC 112.

8 2022 SCC OnLine 1293.

9 2022 LiveLaw (SC) 928.

10 WP No. 305 of 2019 of this Court decided on 26.07.2019.

11 MANU/GJ/1235/2022.

Equally, in Order 8 Rule 1 of the CPC, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 of CPC, which reads as under:

“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:

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

13. A perusal of these provisions shows that, ordinarily, a written statement is to be filed within 30 days. However, a further grace period of 90 days is granted, which the Court may employ for reasons to be recorded in writing and for payment of such costs as it deems fit, to allow

the written statement to come on record. What is of great importance is that, beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement, and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso to Order VII Rule 10, which also provides that the Court has no further power to extend the time beyond this period of 120 days.

14. A plain reading of these provisions indicates that, ordinarily, the written statement is to be filed within 30 days of the date on which the defendant received the summons of the Suit. However, a gross period of 90 days is granted, which a Court may permit for reasons to be recorded in writing. The Commercial Court may also impose costs if it deems necessary. However, the defendant is barred from filing the written statement after the statutory 120-day period from the date of receipt of the summons. Hence, the defendants forfeit their right to file their written statements beyond the statutory period. The provision also bars the Court's jurisdiction to permit such defendants to file the written statement beyond the statutory period. Admittedly, the written statement has been filed by Respondents No. 2 and 3 beyond the statutory period of 120 days, even excluding the COVID period, as directed by the Supreme

Court in the case of Cognizance for Extension of Limitation, In Re. (supra).

The written statement was filed on 14th October 2022.

15. The decision relied upon in **Ashok Kumar Puri & anr. v. S. Suncon Realtors Private Limited** (supra), as relied upon by Mr Gosavi, relates to arbitration, and its facts are distinct from those of the present case. Insofar as the decision in **Vaijanath Dayanand Kale & Ors. v. Nerkar Properties LLP & Ors.** (supra) is concerned, this Court, while holding that no Civil Revision Application or Petition shall be entertained against any interlocutory Order of a Commercial Court, has especially observed that this bar obviously would not apply to the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. The reliance on the decision of the Supreme Court in **Prakash Corporates vs. Dee Vee Projects Limited** (supra) will also not assist the Respondent, as the period of limitation in that case expired during the Covid-19 pandemic and the written statement was filed within the statutory extended period of limitation, as per the Supreme Court in revision in the case of Cognizance for Extension of Limitation, In Re. (supra).

16. In these circumstances, it is clear that the Commercial Court exceeded its jurisdiction by permitting Respondents Nos. 2 and 3 to place the written statement on record long after the expiry of the statutory

period of 120 days. The impugned Order, therefore, cannot be sustained in law. The arguments of Mr. Gosavi that this Court must not intervene in an interlocutory Order are also unsustainable, as under Articles 226 and 227 of the Constitution, this Court is well within its jurisdiction to set aside a wrong or an error of jurisdiction committed by the Courts below.

17. In these circumstances, the Petition is allowed. The Order dated 6th October 2023 is quashed and set aside. The written statement filed by the Respondents No. 2 and 3 and taken on record by the Commercial Court be taken off the record.

18. Writ Petition is disposed of in the aforesaid terms.

DR. NEELA GOKHALE, J