

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****NAGPUR BENCH, NAGPUR****WRIT PETITION NO. 5300 OF 2026**

- 1) M/s. Unique Associates,
Through It's Proprietor,
Mr. Ramashankar Singh,
Aged about 53 Yrs. Occ. Business,
O/o. C/o. R.S. Group of Companies,
1st Bus Stop, Gopal Nagar, Nagpur

... PETITIONER**...VERSUS...**

- 1) M/s. Hydraulix Industrial Flow
Solutions,
A Partnership Firm
Having Office At Plot No. 83, New
Gandhi Lay-out, Behind Z- House,
Near Jafar Nagar, Opposite to
Arqam Public School, Nagpur-
440013, Through Its, Managing
Partner Mr. Anwar Ahmed Khan,
Aged 38 Years, Occ. Business,
Resident of – Plot no.83, New
Gandhi Lay-out, Behind Z- House,
Near Jafar Nagar, Opposite to
Arqam Public School, Nagpur-
440013.
- 2) M/s. N. S. Enterprises,
A Partnership Firm, Through It's
Partner Mr. Shahid Azmi,
Aged about-45 Yrs. Occ. Business,
Resident & Office At- 302, Aman
Residency, Jafar Nagar, Nagpur-
440013.

...RESPONDENTS***Shubham***

Mr. B.L. Borikar, Advocate for the Petitioner(s).
Mr. C. Dasgupta and Mr. R. M. Tahaliyani, Advocate for the Respondent
No. 1.

CORAM : NANDESH S. DESHPANDE, J.
DATED : AUGUST 17, 2026.

ORAL JUDGMENT (NANDESH S. DESHPANDE, J.)

1. **Rule.** Rule is made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.
2. The present petition challenges order passed below Exh. 20 on 17.12.2025. The said application was moved for recalling the order dated 05.08.2025, which proceeded without written statement, and for grant of permission to file the written statement on record.
3. The facts, as can be seen from the memo of the petition, are as under:
 - a) Respondent No. 1 herein filed a Commercial Suit bearing No. 02/2024 before the Commercial Court, Nagpur, seeking a money decree against respondent No. 2 and the petitioner. It is the case of the petitioner that, on 29.03.2025, he was served with a copy of the summons and the plaint sans annexures, i.e., without annexures. In pursuance of the suit summons, he appeared before the Court on

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23.04.2025 and orally requested his opponent, i.e., the learned counsel for the original plaintiff, to supply him with copies of the annexures, which would be relevant for filing the written statement. However, the same were never supplied. It is the contention of the petitioner that the counsel for the original plaintiff orally assured him that copies thereof would be supplied, but the same were never supplied. In that view of the matter, the suit proceeded, and an order dated 05.08.2025 was passed proceeding without the written statement of the petitioner.

b) An application was moved on 09.09.2025 seeking setting aside of that order and for permission to file written statement on record. It is this application which was rejected by the Commercial Court, and the said order is challenged in the present petition.

4. I have heard Mr. B.L. Borikar, learned counsel for the petitioner, and Mr. C. Dasgupta and Mr. R. M. Tahaliyani, learned counsel for the sole respondent.

5. Mr. B.L. Borikar, learned counsel for the petitioner, vehemently contends that, in absence of the documents annexed to the plaint, it was not possible for him to file the written statement on record. Even though he does not dispute that the outer limit of 120 days is prescribed under the Schedule framed under Section 26 of the Commercial Courts Act, by way of a proviso, where a statutory mandate has been engrafted that the

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written statement should be filed within 120 days, he submits that under the general provision, that is, the Code of Civil Procedure, 1908, and more particularly under Order V Rule 2, the plaint has to be accompanied by the annexures. He places reliance on the judgment of this Court in *I K Marine Agency Private Limited v. Tata Steel Limited*, and the other companion writ petition in **Writ Petition No. 3514 of 2026**, and more particularly paragraph No. 30 thereof.

6. On the other hand, the learned counsel for the respondent vehemently opposes the contentions canvassed by the learned counsel for the petitioner. It is his submission that commercial statute being a special statute, would certainly override the general provisions of Code of Civil Procedure and therefore the time limit prescribed under the substituted proviso needs to be adhered to strictly. He further submits that granting a leverage beyond 120 days would be rendering the language of the proviso negative.

7. Rival contentions fall for my consideration:

8. I have perused the entire record with the able assistance of the learned counsel for the respective parties. The Trial Court, in paragraphs 6 and 7 of its judgment, has recorded a finding that the general provision regarding power of the Court for extension of time for filing a written statement under Order VIII of the Code of Civil Procedure does not apply and, therefore, has proceeded to reject the application. A beneficial

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reference in this regard can be had to SLP Civil No. 15817 and 15818 of 2025 in *A. K. Ghosh & Company and others Vs. Biman Bose and others* where the Hon'ble Apex Court, in unequivocal terms, has laid down the proposition that the outer time limit as contemplated under the substituted proviso appended to Section 26 of the Commercial Courts Act has to be strictly adhered to.

9. In the case of *I K Marine Agency Private Limited v. Tata Steel Limited*, referred supra, there was a doubt regarding exact date of service of summons by RPAD. Furthermore, in the present matter, if really the petitioner was not served with annexures, he would have pointed out the same to the Court, by filing application promptly. Nothing of this sort has been done.

10. In that view of the matter, the order seems to be in consonance with the settled principle of law enunciated by the Hon'ble Apex Court. I, therefore, find no merit in the petition.

11. The petition is accordingly rejected.

12. Rule stands discharged.

(NANDESH S. DESHPANDE, J.)

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