

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 18TH DAY OF AUGUST 2026 / 27TH SRAVANA, 1948

OP(C) NO. 1442 OF 2025

AGAINST THE ORDER DATED 28.05.2025 IN IA 3/2023 IN
CS NO.3 OF 2023 OF COMMERCIAL COURT/ADDITIONAL SUB
COURT,NORTH PARAVUR

PETITIONER/S:

ANTONY
AGED 44 YEARS
S/O OF THOMAS, PULIKKAL HOUSE, VADAKKEKKARA
VILLAGE, PATTANAM KARAYIL, PARAVUR TALUK, PIN -
683513

BY ADVS.
SHRI.P.K.SREEVALSAKRISHNAN
SHRI.K.R.PRATHISH
SRI.S.UNNIKRISHNAN (NELLAD)
SHRI.AKHIL BABU
SMT.HIMA A.S.
SMT.KRISHNA DAS

RESPONDENT/S:

- 1 M/S MENACHERY INDUSTRIES
OPERATING WITH ITS HEADQUARTERS IN
ANGAMALY ,REPRESENTED BY ITS PROPRIETOR,
MATHACHAN S/O JOSE . OLD, BUSINESS, MENACHERY
HOUSE, ANGAMALY VILLAGE, ALUVA TALUK, ERNAKULAM
DISTRICT, PIN - 683572
- 2 SEITHALAVI N.V
AGED 50 YEARS
NAYEDHARAM HOUSE, BEYPORE ,BEYPORE VILLAGE,
KOZHIKODE TALUK-PIN 673015

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BY ADV SHRI.N.AJITH

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
18.08.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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EASWARAN S., J.

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Dated this the 18th day of August, 2026

JUDGMENT

The defendant in a commercial suit has approached this Court by filing the Original Petition challenging the refusal of the trial court to receive his written statement, which was filed beyond the statutory period of 120 days. This Court is called upon to consider the question notwithstanding the settled position of law that the mandatory period of 120 days prescribed under the proviso to Order VIII Rule 1 of the CPC cannot be extended under any circumstances. The petitioner, however, contends that, during the interregnum, when the statutory period for filing the written statement expired, the suit was transferred from the Commercial Court, Ernakulam, to the Commercial Court, North Paravur.

2. Heard Sri. P.K. Sreevalsakrishnan.P.K. for the petitioner and Shri N.Ajith for respondent.

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3.The dates and events in the present case for the purpose of completion of the judgment, the same is quoted below:-

“04-02-2022-Suit filed
8-02-2022-Issue summons to the defendant.
19-2-2022-attachment ordered.
26-02-2022- Summons recieved by the Petitioner.
28-03-2022-Next Posting date but no sitting.
01-04-2022-GO.M.S.No.53/2022(Home) dated 01-04-2022.
13-06-2022-O.M. DT(B) 39751/2022 D11-3 dated
13-06-2022.
25-06-2022-Next posting date but no sitting.
26-06-2022- Statutory period to file written statement expires.
26-09-2022-Cases called defendants were set ex parte.
29-11-2022-Written statement,petition to set aside ex parte
filed/Case transferred to Commercial Court N.Paravur.
30-11-2022- Dismissed the petition to set aside ex parte .Proceedings
written over petition. Came to know only when we perused the court
records in Paravur.”

4. The above-quoted dates would show that the defendant was obliged to file the written statement within 30 days from the date of receipt of the summons. However, going by the proviso to Order VIII Rule 1 of the Code of Civil Procedure, the defendant gets an extended period of 90 days, apart from the 30 days already provided under

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Rule 1 of Order VIII. Thus, 120 days expired in the present case on 26.06.2022. In the meantime, G.O. (Ms.) No. 53/2022/Home dated 18.03.2022 was issued by the Government of Kerala, by which all Sub Courts in the State were designated as Commercial Courts. Thereafter, on 13.06.2022, this Court issued an official memorandum directing the District Courts to take necessary steps to transfer those commercial cases which were filed before the issuance of the 14 Commercial Courts notified as per the initial Government Order to the jurisdictional Sub Courts which were designated as per G.O. (Ms.) No. 53/2022/Home dated 18.03.2022. The petitioner contends that, by virtue of the office memorandum issued by this Court on 13.06.2022, the Sub Court, Ernakulam lost its jurisdiction to entertain the suit and that, unless and until an order is passed under Section 24 of the Code of Civil Procedure transferring the suit to the jurisdictional Sub Court and the said Sub Court commences the proceedings, the interregnum period is liable to be excluded for the purpose of calculating the period of 120 days prescribed under the proviso to Rule 1 of Order VIII.

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5. In the present case, the statutory period for filing the written statement expired on 26.06.2022. On 26.09.2022, the defendant was set *ex parte*. However, on 29.11.2022, the petition to accept the written statement and the petition to set aside the *ex parte* order were transferred to the Commercial Court, North Paravur. On 30.11.2022, the applications were dismissed. Later, when an application was filed to set aside the *ex parte* order, the same was allowed. However, the Sub Court, North Paravur, refused to receive the written statement, since, according to the Court, the statutory period of 120 days had already expired.

6. According to Sri. Sreevalsalakrishnan, the learned counsel for the petitioner, the petitioner is entitled to the benefit of the proviso to Section 15(4) of the Commercial Courts Act, 2015. He further points out that, in terms of Section 24(5) of the Code of Civil Procedure, the proceedings before the transferor Court should come to an end once the official memorandum is issued by this Court and that, until the case is called in the transferee Court, the proceedings in the suit will remain in suspended animation. Therefore, the

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period during which the proceedings remained in suspended animation is liable to be excluded for the purpose of computing the period for filing the written statement in the present case. In support of his contention, the learned counsel placed reliance on the following decisions:-

Anvita Auto Tech Works Pvt. Ltd (M/s) v. M/s Aroush Motors [2025 KHC Online 6852], ***SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.*** [2019 (2) KHC 97], ***Amoda Iron Steel Limited v. Sneha Aanlytics and Scientifics*** [2022 KHC Online 7482], ***Sayan Sarker v. Austin Distribution Private Ltd.*** [2021 KHC Online 3693], ***Dredging and Destiltation Company Private Ltd. M/s Machintosh Burn and Northern Express Consortium*** [2023 KHC Online 4425], ***Raj Process Equipments and Systems Pvt. Ltd v. Honest Derivatives Pvt. Ltd*** [2023 KHC Online 6236] and ***Namita Gupta v. Suraj Holdings Ltd*** [2024 SCC Online (Del) 143].

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7. Per contra, Sri. N. Ajith, the learned counsel for the first respondent, pointed out that the petitioner's contention is completely misconceived. The contention of the petitioner could perhaps have been accepted by this Court if he had filed the written statement before the Sub Court, Ernakulam, and the Court had refused to receive the same on account of the Office Memorandum issued by this Court. It is pointed out that the petitioner chose to file the written statement only when the matter was transferred to the Sub Court, North Paravur, and by that time, the mandatory period of 120 days had expired. Therefore, the Court was powerless to pass any order accepting the same and, hence, rightly rejected the request.

8. On an anxious consideration of the submissions raised across the bar, this court finds that the question to be considered by this Court is whether the period from 13.06.2022, the date on which the Office Memorandum was issued by the High Court, till 30.11.2022, when the matter was called before the Sub Court, North Paravur, is liable to be excluded for the purpose of calculating the

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mandatory period of 120 days prescribed for filing the written statement in terms of the proviso to Rule 1(2) of Order VIII of the Code of Civil Procedure.

9. The thrust of the argument of the learned counsel for the petitioner is built upon the proviso to sub-section (4) of Section 15 of the Commercial Courts Act, 2015. Sub-section (4) and its proviso read as under:-

“15. Transfer of pending cases.—

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(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance 1[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.“

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10. The dates which have been extracted in the above shows that by the time the suit was called before the Sub Court, Ernakulam on 26.09.2022, the statutory period for filing the written statement was over. What is the effect of the Office Memorandum dated 13.06.2022 is the next question.

11. It is incomprehensible to hold that, as soon as an Office Memorandum was issued by this Court on 13.06.2022, in tune with the Government Order dated 01.04.2022, the Sub Court, Ernakulam lost jurisdiction to try the suit. The Sub Court, Ernakulam, continued to have jurisdiction until an order of transfer was passed under Section 24 of the Code of Civil Procedure 1908.

12. In the present case, the order of transfer was passed by the District Court after 26.09.2022, when the case was called before the Sub Court, Ernakulam. By that time, the statutory period for filing the written statement had expired. That apart, the petitioner has no case pleaded or proved that, before 26.09.2022 or thereafter, he attempted to file the written statement before the Sub Court, Ernakulam, and that the same was refused on the ground that

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the suit was expected to be transferred to the Sub Court, North Paravur.

13. The case projected by the petitioner could have been examined by this Court, and the benefit of the proviso to sub-section (4) of Section 15 could have been granted by this Court, had the petitioner attempted to file the written statement before the Sub Court, Ernakulam, and the same was refused. Admittedly, the petitioner has no such case. If that be so, this Court cannot accede to the request of the petitioner to exclude the period from 26.06.2022 till 30.11.2022, when he filed the written statement. The Sub Court retained its jurisdiction when the matter was taken up for consideration on 26.09.2022, because the District Court had not passed any order of transfer. In such circumstances, this Court does not find any jurisdictional error or infirmity in the order passed by the Sub Court warranting interference under Article 227 of the Constitution. In the light of the above conclusion, this court finds that the precedents cited across the bar has no relevance in this case.

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Accordingly the Original Petition fails and is accordingly dismissed.

Sd/-
EASWARAN S.
JUDGE

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APPENDIX OF OP(C) NO. 1442 OF 2025

PETITIONER EXHIBITS

- | | |
|------------|---|
| Exhibit P1 | TRUE COPY OF THE PLAINT FILED AS C.S. NO. 78 OF 2022 OF COMMERCIAL COURT ERNAKULAM FILED BY THE 1ST RESPONDENT / PLAINTIFF ALONG WITH ITS ENGLISH TRANSLATION |
| Exhibit P2 | TRUE COPY OF THE E-COURT PROCEEDINGS DATED 26-09-2022 IN C.S. NO.78/2022 BEFORE COMMERCIAL COURT ERNAKULAM |
| Exhibit P3 | TRUE COPY OF THE I.A. NO.5/2022 DATED 27-11-2022 FILED IN C.S. NO.78/2022 BEFORE COMMERCIAL COURT ERNAKULAM ALONG WITH ITS ENGLISH TRANSLATION |
| Exhibit P4 | TRUE COPY OF THE WRITTEN STATEMENT DATED 27-11-2022 IN C.S.NO. 78/2022 BEFORE COMMERCIAL COURT ERNAKULAM ALONG WITH ITS ENGLISH TRANSLATION |
| Exhibit P5 | TRUE COPY OF THE E-COURT PROCEEDINGS DATED 29-11-2022 IN C.S.NO. 78/2022 BEFORE COMMERCIAL COURT ERNAKULAM |
| Exhibit P6 | TRUE COPY OF I.A. NO. 3/2023 IN C.S.NO 3 /2023 BEFORE ADDITIONAL SUB (COMMERCIAL) COURT N.PARAVUR DATED 27-05-2023 ALONG WITH ITS ENGLISH TRANSLATION |
| Exhibit P7 | TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN I.A.NO.3 /2023 BY THE 1ST RESPONDENT DATED 26-05-2023 ALONG WITH ITS ENGLISH TRANSLATION |
| Exhibit P8 | TRUE COPY OF THE I.A. NO.4 OF 2023 IN C.S. 3/2023 IN ADDITIONAL SUB (COMMERCIAL) COURT N.PARAVUR DATED 25-10-2023 ALONG WITH ITS ENGLISH TRANSLATION |
| Exhibit P9 | TRUE COPY OF THE COUNTER AFFIDAVIT DATED 23-1-2024 FILED BY THE 1ST RESPONDENT IN I.A. NO.4/2023 IN C.S |

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	NO. 3/2023 OF ADDITIONAL SUB (COMMERCIAL) COURT N.PARAVUR ALONG WITH ITS ENGLISH TRANSLATION
Exhibit P10	TRUE COPY OF THE I.A. NO. 5/2024 IN C.S. NO.3/2023 OF ADDITIONAL SUB (COMMERCIAL) COURT N.PARAVUR DATED 2- 09-2024 ALONG WITH ITS ENGLISH TRANSLATION
Exhibit P11	TRUE COPY OF THE E-COURT PROCEEDINGS DATED 04-09-2024
Exhibit P12	TRUE COPY OF THE ORDER PASSED IN I.A. NO. 3 /2023 DATED 28-05-2025
Exhibit P13	TRUE COPY OF THE ORDER PASSED IN I.A. NO. 4 /2023 DATED 28-05-2025