IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10803 OF 2026

Jyoti Structures Limited
a Company incorporated under the
Companies Act, 1956, and having
its office at 6th Floor, Valecha Chambers,
New Link Road, Andheri (W), Mumbai,
Maharashtra, India – 400053
through its Authorized Signatory
Mr. Abdul Hameed Khan. ...Petitioner

Versus

Africa Power Company CC,
a close corporation duly registered
and incorporated under the Close
Corporations Act 69 of 1984,
having its registered address at
40 Potgieter Street, Alrode, 1451,
South Africa, through its authorized
representative Mr. Pradeep Kamble. ...Respondent

Mr. Ashish Kamat, Senior Counsel, a/w Mr. Ashwin Bhadang, Mr. Abhilash Chaudhary, Mr. Amandeep Saini, i/b Shardul Amarchand Mangaldas & Co., for the Petitioner.

SAINATH
SANJAY
BODKHE

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by SAINATH
SANJAY BODKHE
Date: 2026.09.11
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Ms. Megha Chandra, a/w Mr. Vijay Purohit, Ms. Nikita Bangera, Mr. Abhilash Gaur, i/b P & A Law Offices, for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : 07th September 2026

JUDGMENT:

1. In view of the short question that arises for consideration, Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the Petitioner – original Defendant No.1 takes exception to an order dated 18th June, 2026, passed by the learned Judge, Commercial Court at Dindoshi, Mumbai in Notice of Motion No.4044/2025 in Commercial Suit No.86/2025, whereby the said Notice of Motion seeking condonation of delay in filing the written statement came to be rejected on the premise that, the Notice of Motion was filed on 121st day from the service of the writ of summons on the Defendant No.1.

3. The background facts leading to this petition, can be summarized as under :-

4.1 The respondent – plaintiff has instituted a Commercial Suit seeking recovery of the amounts due and payable under the agreements purportedly executed by the Defendant No.1 in favour of the plaintiff. The writ of summons was served on the Defendant No.1 on 22nd May, 2025.

4.2 Defendant No.1 claims that, the initial 30 days time limit for filing the written statement expired on 21st June, 2025. The extended 90 days period provided by the Order VIII Rule 1 of the Code of Civil Procedure, 1908, ("Code, 1908"), in its application to the commercial disputes under the Commercial Courts Act, 2015, would have expired on 19th September, 2025. On that day itself, i.e. 120th day from the service of the writ of summons, the Defendant No.1 filed the Notice of Motion alongwith the written statement seeking condonation of delay in filing the written statement. It was the contention of the Defendant No.1 that, the date of service of writ of summons i.e. 22nd May, 2025, was required to be excluded in computing the 120 days period for filing the written statement.

4.3 By the impugned order, the learned Judge, Commercial Court, was persuaded to reject the application observing, *inter alia,* that, the date of service of the writ of summons, cannot be excluded while computing the maximum period prescribed for filing the written statement, as the provisions contained in Section 9 of the General Clauses Act, 1897, ("Act, 1897") had no application to a commercial suit instituted under the Commercial Courts Act, 2015 ("Act, 2015").

4.4 The learned Judge, Commercial Court drew support to his view from an order passed by this Court in the case of ***Ashish Pradyuman Bhankaria & ors. Vs. Amit Pradyuman Bhankaria & ors.***[1].

4.5 Being aggrieved, the Defendant No.1 has invoked the writ jurisdiction of this Court.

4. I have heard Mr. Ashish Kamat, the learned Senior Advocate for the Petitioner, and Ms. Megha Chandra, the learned Counsel for the Respondent, at some length. With the assistance of learned Counsel for the parties, I have perused the material on record.

5. The short question that crops up for consideration is, whether the day of service of the writ of summons on the defendant, is required to be excluded while computing the time prescribed under Order VIII Rule 1 of the Code, 1908 for filing the written statement ?

6. Mr. Kamat, the learned Senior Advocate for the petitioner, submitted that the learned Judge, Commercial Court, committed an error of law in holding that, the provisions

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1 IA/3447/2022 in Comm. Suit/600/2018

contained in Section 9 of the Act, 1897 would not govern the computation of time for filing the written statement in a commercial suit before the Commercial Court. The provisions contained in Section 9 of the Act, 1897 govern any Central Act or Regulation made after the commencement of the former Act. The principle incorporated in Section 9 of the Act, 1897 that, where the words "from" and "to" are used, the first day is to be excluded and the last day is to be included, is applied to diverse enactments, even where the provisions contained in the Limitation Act, 1963, are not attracted. To lend support to this submission, Mr. Kamat placed reliance on the judgments of the Supreme Court in the cases of ***Tarun Prasad Chatterjee Vs. Dinanath Sharma***[2], and ***M/s. Anvita Auto Tech Works Pvt. Ltd. Vs. M/s. Aroush Motors & anr.***[3]. Reliance was also placed on a Division Bench judgment of the Delhi High Court in the case of ***Next Gen Pharma India Pvt. Ltd. & anr. Vs. CD Pharma India Pvt. Ltd.***[4]

7. Mr. Kamat would urge, the learned Judge, Commercial Court, misdirected himself in placing reliance on the order dated 14th October, 2022 in the case of ***Ashish Bhankaria***

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2 (2000) 8 SCC 649

3 2025 INSC 1202

4 FAO(OS) (COMM) 129/2025 & CM APPL. 51255/2025 dt. 08/09/25.

(supra), which was rendered in completely a different fact-situation. In that case, this Court held that the provisions of Section 9 of the Act, 1897 and Section 12(1) of the Limitation Act, 1963, are inapplicable as the period of limitation has been determined by the Supreme Court in exercise of its power under Article 142 of the Constitution of India when, on account of Covid-19 pandemic situation, the period of limitation was suspended.

8. Per contra, Ms. Chandra, the learned Counsel for the respondent – plaintiff, submitted that, the trial Court has taken a correct view of the matter. The object of enacting the Act, 2015, is required to be kept in view while determining the aspect of applicability of the provisions contained in Section 9 of the Act, 1897.

9. A two-pronged submission was canvassed by Ms. Chandra. Firstly, in view of the provisions contained in Section 21 of the Act, 2015, the provisions contained therein have an overriding effect over anything inconsistent therewith contained in any other law or in the instrument having effect by virtue of any law for the time being in force. Resultantly, the provisions contained in Order VIII Rule 1 of the Code, 1908, as amended by the Act,

2015, will prevail over the provisions contained in the Act, 1897. Therefore, the benefit of the provisions contained in Section 9 of the Act, 1897 would not be available to a defendant.

10. Secondly, Ms. Chandra submitted that, it is well settled that, in consonance with the object of the Act, 2015, the provisions therein are required to be construed strictly. To buttress this submission, Ms. Chandra placed reliance on the judgment of the Supreme Court in the case of ***Ambalal Sarabhai Enterprises Ltd. Vs. K. S. Infraspace LLP & anr.***[5], wherein it was enunciated that, in the matter of determining the jurisdiction of the Commercial Court, the provisions contained therein are required to be construed strictly.

11. I have given anxious consideration to the submissions canvassed across the bar. The provisions contained in Order VIII Rule 1 of the Code, 1908 in its application to a suit under the Act, 2015, read as under :-

ORDER VIII

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5 (2020) 15 SCC 585

"[**1. Written statement**. - The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence :

"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 twenty days from the date of service of summons and on expiry of one hundred 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."

12. From a bare perusal of the aforesaid provision, it becomes abundantly clear that, the Parliament has substituted the proviso to Rule 1 of Order VIII of the Code, 1908. Under the main part of Rule 1, like in an ordinary suit, the defendant is enjoined to file written statement within 30 days from the date of service of summons on him. The proviso to Rule 1, however, provides that, the defendant who fails to file the written

statement in a Commercial Suit within the said period of 30 days, shall be allowed to file the written statement on such other day, as may be specified by the Court, but which shall not be later than 120 days from the date of service of summons and on the expiry of 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.

13. The Parliament has, thus, provided the consequences that ensue upon the failure of the defendant to file written statement within 120 days from the date of service of the writ of summons. First, the defendant forfeits the right to file the written statement. Second, the Court is precluded from permitting such defendant to file the written statement.

14. In the context of the controversy at hand, what is of material significance is the use of the word "from" in the main part of Rule 1 as well as twice in the proviso to Rule 1. This use of the word "from" assumes salience in the determination of the question, whether the date of service of the writ of summons is to be included or excluded in computing the time prescribed and limited by Order VIII Rule 1 of the Code, 1908.

15. At this stage, the provisions contained in Section 9 of the Act, 1897 deserve to be extracted. They read as under :-

> "**9. Commencement and termination of time.** - (1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".
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> (2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

16. In plain terms, Section 9 of the Act, 1897 provides that, while computing the period of limitation the first day in a series of days shall be excluded and the last day in a series of days shall be included where the words "from" and "to", respectively, are used in any Central Act or Regulation, enacted after the commencement of the Act, 1897. In a sense, Section 9 of the Act, 1897 gives statutory recognition to the well established principle applicable to the construction of statutes prescribing a timeframe, that, ordinarily, in computing the time prescribed, the rule is to exclude the first and include the last day.

17. The aforesaid principle has received a wide acceptance and judicial imprimature in a number of decisions across various types of legislations wherein the question of computation of time, arose for consideration, even where the provisions contained in the Limitation Act, 1963, were not attracted.

18. In the case of ***State of H. P. & anr. Vs. M/s. Himachal Techno Engineers & anr.***[6], wherein the Supreme Court considered the aspect of limitation for filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act, 1996") to set aside an arbitral award, which also precludes the Court from condoning the delay beyond 30 days of the initial three months period, the Supreme Court resorted to the provisions contained in Section 9 of the Act, 1897 to hold that, the date on which the award was received by the party who applies for setting aside of the award shall be excluded for computing the period of limitation for filing a petition under Section 34 of the Act, 1996.

19. In the case of ***Tarun Prasad Chatterjee (supra),*** the applicability of the provisions contained in Section 9 of the Act,

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6 (2010) 12 SCC 210

1897 to an Election Petition under Section 81 of the Representation of the People Act, 1951 ("RP Act, 1951") was examined by a three-Judge Bench of the Supreme Court. In the said case, a contention was raised on behalf of the appellants therein that, in view of the specific language employed in Section 81(1) of the RP Act, 1951, the words "within" and "from" used therein would indicate that, Section 9 of the Act, 1897 had no application to the Election Petition. Repelling the submission, the Supreme Court enunciated the law as under :-

> "**10.** Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.
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> **11.** In *Halsbury Laws of England*, 37th Edn., Vol. 3, p. 92, it is stated as follows:-
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> > "Days included or excluded - When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last- mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do

not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

12. Section 9 says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from the 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless the 1st January is excluded from the period of computation."

(emphasis supplied)

20. Another three-Judge bench of the Supreme Court in the case of ***Econ Antri Ltd. Vs. Rom Industries Ltd. & anr.***[7]

7 AIR 2013 SC 3283

examined the question of applicability of the principle contained in Section 9 of the Act, 1897 to the computation of period of one month prescribed under Section 142(b) of the Negotiable Instruments Act, 1881 ("N. I. Act, 1881") for filing the complaint for an offence punishable under Section 138 of the N. I. Act, 1881. The Supreme Court expressly approved the enunciation of law in the case of ***Tarun Prasad Chatterjee (supra)***, and, thereafter, exposited the position as under :-

> "20. As the Limitation Act is held to be not applicable to N. I. Act, drawing parallel from Tarun Prasad Chatterjee where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the N. I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the use of the two different words 'from' and 'of' in Section 138 at different places indicates the intention of the legislature to convey different meanings by the said words."
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> (emphasis supplied)

21. The three-Judge Bench approved the correctness of the view recorded by the Supreme Court in the case of ***M/s. Saketh***

India Ltd. & ors. Vs. M/s. India Securities Ltd.[8] In that case, the Supreme Court had considered the question whether for calculating the period of one month which is prescribed under Section 142(b) of the N. I. Act, 1881, the period has to be reckoned by excluding the date on which the cause of action arose ?

22. Applying the principle of excluding the day from which the period is to be reckoned, incorporated under Section 12 of the Limitation Act, 1963 and Section 9 of the Act, 1897 and following its earlier decision in the case of ***Haru Das Gupta Vs. State of W. B.***[9], the Supreme Court held that, there was no reason for not adopting the rule enunciated in the said case which was consistently followed and which was adopted in the Act, 1897 and the Limitation Act, 1963. Ordinarily, in computing the time, the rule to be observed was to exclude the first day and to include the last day.

23. In the light of the aforesaid enunciation of law, reverting to the facts of the case, given the use of the word "from" in the main part of Rule 1 and twice in the proviso to Rule 1 of Order VIII of the Code, 1908, the provisions contained in Section 9 of

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8 AIR 1999 SC 1090

9 (1972) 1 SCC 639

the Act, 1897 are clearly attracted. It is pertinent to note that, the provisions contained in Section 9 of the Act, 1897 have been made applicable even where the different words like "within", "of" and "after" were used to denote the time. Thus, the use of the word "from" squarely brings the case within the ambit of the provisions contained in Section 9 of the Act, 1897.

24. The submission on behalf of the Respondent that, having regard to the object of the Act, 2015 and the provisions contained in Section 21 of the Act, 2015, the provisions contained in Section 9 of the Act, 1897, have no application, does not carry much substance. By virtue of the non obstante clause contained in Section 21 of the Act, 2015, the provisions contained therein, will prevail over anything inconsistent contained in any other law for the time being in force. However, the provisions contained in Section 9 of the Act, 1897, do not contain anything inconsistent with the provisions contained in the Act, 2015. Section 9 of the Act, 1897 incorporates the rule of construction of statute in the matter of computation of time. Section 9 of the Act, 2015, does not provide a different period of time for filing the written statement, nor does it permit the extenstion of time to file the written statement beyond the one prescribed under Order VIII Rule1 of the Code, 1908.

25. It is well recognized that, a non obstante clause cannot be given a wider interpretation than the intendment of the legislature. A non obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same.

26. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Central Bank of India Vs State of Kerala and Ors,***[10] wherein the following observations were made:

> "103. A non obstante clause is generally incorporated in a statute to give overriding effect to a particular section or the statute as a whole. While interpreting non obstante clause, the Court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. This rule of interpretation has been applied in several decisions."

27. The second limb of the submission of Ms. Chandra that, the provisions contained in the Act, 2015 are required to be construed strictly and, thus, construed the benefit of the provisions contained in Section 9 of the Act, 1897 cannot be extended, also does not merit countenance.

28. Undoubtedly, the time frame prescribed by the Order VIII Rule 1 of the Code, 1908, in its application to the Act, 2015, is

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10 (2009) 4 SCC 94.

required to be construed strictly. Under no circumstances, after the expiry of 120th day from the service of the writ of summons, can a defendant be permitted to file the written statement. However, the question as to whether the period of 120 days has expired or not, is not a matter of strict or liberal construction of the provisions of the Act, 2015. It is simply a matter of computation of the period, applying the well established principle incorporated in Section 9 of the Act, 1897, in the matter of computation of time. The strict construction of the provisions contained in the Act, 2015, does not imply that, the provisions of the Act, 2015, shall not be correctly construed. In other words, the strict construction cannot be equated with an erroneous interpretation of the provisions.

29. The learned Judge, Commercial Court, does not seem to have adverted to the import of the provisions contained in Section 9 of the Act, 1897, in a correct perspective. The reliance on an order passed by this Court in the case of ***Ashish Bhankaria (supra)***, to arrive at the conclusion that, the day of service of writ of summons is not required to be excluded, was misplaced.

30. In the said case, this Court was confronted with the question whether 01st March, 2022, the date of commencement

of the extended period granted by the Supreme Court, by orders in Suo Motu Writ Petition whereby in the wake of the Covid-19 pandemic the period of limitation was suspended, is to be excluded while computing the period of 90 days from 01st March, 2022. In that context, this Court observed that, since the period of limitation for filing the written statement had been determined by the order of the Supreme Court, the decision in the case of ***M/s. Saketh India Ltd. (supra)***, was inapplicable to the said case.

31. In the case at hand, as noted above, the provisions contained in order VIII Rule 1 of the Code, 1908 properly fall within the ambit of Section 9 of the Act, 1897, as the word "from" has been specifically used therein. Thus, the reliance on the order passed by this Court in the case of ***Ashish Bhankaria (supra)***, to sustain the view that, the day of service of writ of summons cannot be excluded in computing the 120 days period appears to be erroneous.

32. The conspectus of the aforesaid consideration is that, as the principle that, in computing the period of limitation the first day is to be excluded, has been consistently followed across the spectrum of legislations, even where the provisions

contained in Section 12 of the Limitation Act, 1963, were not attracted, in computing the time for filing the written statement in a suit governed by the Act, 2015, also, the day of service of writ of summons is required to be excluded.

33. On the facts, there is not much controversy that, if the date of service of the writ of summons is excluded, the Notice of Motion alongwith written statement was filed on the 120th day from the service of writ of summons.

34. Ms. Chandra, the learned Counsel for the Respondent, fairly submitted that, in the other petitions arising out of the same suit, this Court has condoned the delay in filing the written statement on account of identical reasons.

35. In the affidavit in support of the notice of motion, the petitioner has adverted to the circumstances, of the petitioner – Company having undergone the Corporate Insolvency Resolution Process, and the resultant difficulties in obtaining the information and documents to prepare and file the written statement.

36. Thus, as the delay in filing the written statement on behalf of other defendants, has been condoned for substantially

the same reasons, the delay in filing the written statement qua the Defendant No.1 also deserves to be condoned.

37. Hence, the following order :-

: : O R D E R : :

(i) The Writ Petition stands allowed.

(ii) The impugned order stands quashed and set aside.

(iii) The delay in filing the written statement stands condoned.

(iv) The written statement be taken on record.

(v) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]