

OP(C) No.591 of 2023

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 8TH DAY OF MARCH 2023 / 17TH PHALGUNA, 1944

OP(C) NO. 591 OF 2023

**AGAINST THE ORDER/JUDGMENT IN IA No.6/2023 in CS 490/2021 OF
THE COMMERCIAL COURT, ERNAKULAM**

PETITIONER/S:

1. ANIL.M.P
AGED 55 YEARS
S/O PRABHAKARAN,MADATHIYANIPADATH HOUSE,
THOMASPURAM, MARADU, ERNAKULAM, PIN - 682304
- 2 MINI.K.S, AGED 48 YEARS
W/O ANIL.M.P, MADATHIYANIPADATH HOUSE,THOMASPURAM,
MARADU, ERNAKULAM, PIN - 682304
BY ADVS.
K.V.SANOSH
B.R.MURALEEDHARAN
I.J.AUGUSTINE
K.V.SURESH
NEETHU NALINAKSHAN

RESPONDENT/S:

CAPITAL FINSERV LTD
REG.OFFICE ERUMALA TOWER, COLLEGE ROAD,
ERNAKULAM,682 011, REPRESENTED BY LEGAL OFFICER
BENNY JOSEPH, AGED 59 YEARS,RESIDING AT PARAKUDIYIL
HOUSE, KOZHIPPILLY P.O., INCHOOR, PIN-686691,

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 08.03.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”**C.S DIAS, J.****OP(C) No.591 of 2023****Dated this the 8th day of March, 2023.****JUDGMENT**

The original petition is filed challenging the order passed in IA No.6/2023 in CS No.490/2021 by the Commercial Court, Ernakulam. The petitioners are the defendants, and the respondent is the plaintiff.

2. The relevant antecedent facts leading to the impugned order are:

2. (i). The respondent has filed the suit against the petitioners for recovery of money.

2.(ii). The petitioners entered appearance in the suit on 5.8.2022 and prayed for time to file their written statement.

2. (iii). As the relevant documents pertaining to the transaction were misplaced, the petitioners could not file the written statement within the prescribed time period.

2.(iv). The Commercial Court proceeded with the suit. The respondent remitted the balance court fee, and the suit was listed for trial.

2.(v). The petitioners made earnest efforts and traced out the documents. They immediately filed their written statement along with IA No.6/2023 to accept the written statement on file.

2.(vi). The Commercial Court, by the impugned order, rejected the application.

2. (vii). The impugned order is perverse, irrational and improper. Hence, the original petition.

3. Heard; Sri. K.V Sanosh, the learned Counsel appearing for the petitioners on admission.

4. The point is whether there is any impropriety or illegality in the impugned order.

5. An appreciation of the pleadings and materials on record reveals that the plaint was instituted on 4.12.2021. The petitioners entered appearance in the suit on 13.1.2022 and not 5.8.2022, as alleged in the original petition.

6. Admittedly, IA No.6/2023 was filed to receive the written statement on 27.2.2023, i.e., after one year.

7. By Sec.16 of the Commercial Courts Act, 2015 (in short, 'Act'), the Code of Civil Procedure stands amended in its application to commercial disputes as specified in the Schedule to the Act. Consequently,

Orders V and VIII of the Code of Civil Procedure stand amended by the Schedule, which reads as follows:

(A) In the Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso shall be substituted, namely:-

"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 days, 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.**"

(D) In Order VIII-

(i) in Rule 1, for the proviso, the following proviso shall be substituted, namely:-

"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."

8. The amended provision of the Code of Civil Procedure as per Section 16 of the Commercial Courts

Act mandates that the defendant(s) has to file the written statement within 120 days from the date of service of summons, failing which the defendant(s) right to file the written statement will stand forfeited and the Court shall not accept the written statement on record.

9. In **SCG Contracts India Pvt. Ltd v. K.S Chamankar Infrastructure Pvt. Ltd & Ors** [(2019) 12 SCC 210], the Honourable Supreme Court has held that the amended provisions of Orders V and VIII of the Code are mandatory.

10. In **Raj Process Equipments and Systems Pvt Ltd & Ors v. Honest Derivatives Pvt Ltd** [2022 LiveLaw (SC) 928] the Hon'ble Supreme Court has held that if the suit is filed before the Civil Court and then transferred to the Commercial Court, then the amended

provisions of Orders V and VIII of the Code are directory.

11. In the light of the amended provisions of the Code and its interpretation given by the Hon'ble Supreme Court, and the undisputed fact that the written statement was filed beyond the stipulated time period, I hold that the Commercial Court was justified in rejecting the application to accept the written statement.

There is no error in the impugned order warranting interference by this Court under Article 227 of the Constitution of India. The original petition fails and is consequentially dismissed.

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APPENDIX OF OP(C) 591/2023

PETITIONER EXHIBITS

P1-TRUE COPY OF PLAINT IN C.S.NO.490/2021 OF PRINCIPAL SUB COURT,
ERNAKULAM DATED 04.12.2021

P2- TRUE COPY OF WRITTEN STATEMENT IN C.S.NO.490/2021
DATED 28.02.2023

P3 TRUE COPY OF PETITION TO ACCEPT WRITTEN STATEMENT
DATED 28.02.2023

P4- CARBON COPY OF THE ORDER IN I.A.NO.6/2023 IN C.S.NO.490/2021
DATED 01.03.2023