

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE VIVEK JAIN

ON THE 29th OF JANUARY, 2024

MISC. PETITION No.6405 OF 2023

BETWEEN :-

1. **ITARSI PIPES SALES, THROUGH ITS PROPRIETOR MOHAMMAD BILAL S/O SHRI MOHAMMAD AYYUB, AGED ABOUT 32 YEARS, OCCUPATION BUSINESS, R/O DIVERSION ROAD, AWAM NAGAR, NEAR RELIANCE TOWER, ITARSI, DISTRICT NARMADAPURAM (MP)**
2. **CHANDINI BORING AND MACHINERY, THROUGH ITS PROPRIETOR SHRI MOHAMMAD AYYUB, OCCUPATION BUSINESS, R/O DIVERSION ROAD, AWAM NAGAR, NEAR RELIANCE TOWER, ITARSI, DISTRICT NARMADAPURAM (MP)**

.....PETITIONERS

(BY MR. JAYANT PRAKASH PATEL - ADVOCATE)

AND

1. **OMRF PIPES AND PRODUCTS THROUGH ITS PROPRIETOR MD. SHAHID S/O LATE SHRI IBRAHIM, AGED ABOUT 45 YEARS, R/O OMRP PIPES AND PRODUCTS, 1/8 PATEL NAGAR, BEHIND MANOHAR DAIRY, HANADIA ROAD, BHOPAL (MP)**

2. MD. SHAHID ;

3. RAINY ENTERPRISES PVT. LTD. 41-42,
PODDAR PLAZA, NEW SIYAGANJ, INDORE
(MP)

.....RESPONDENTS

*(MR. SARABVIR SINGH OBEROI – ADVOCATE FOR RESPONDENTS
NO. 1 & 2)*

*This miscellaneous petition coming on for orders this day,
JUSTICE SUJOY PAUL passed the following :*

ORDER

This petition filed under Article 227 of the Constitution takes exception to the order dated 06/09/2023 (Annexure P/1) whereby the Court below has closed the right of petitioners/defendants to file written statement after the period of 120 days.

2. The admitted facts between the parties are that the respondents/plaintiffs filed a commercial suit in which notices were issued to the petitioners/defendants. The petitioners received the notices on 21/03/2023. The petitioners entered appearance before the Commercial Court on 10/04/2023. The written statement was filed by the petitioners/defendants only on 09/08/2023. Since, plaintiffs took an objection against such written statement belatedly filed, the question cropped up before

the learned Commercial Court was whether such a written statement filed beyond 120 days can be taken on record. The Commercial Court after considering relevant provisions of CPC and two judgments of Supreme Court reported in **(2019) 12 SCC 210 SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited and others** and **(2022) 5 SCC 112 Prakash Corporates vs. Dee Vee Projects Limited** opined that the defendants No. 1 & 2 have failed to file written statement within extended maximum period of 120 days and, therefore, written statement cannot be taken on record.

3. Shri Jayant Prakash Patel, learned counsel for the petitioners criticized the said order of learned Commercial Court and placed reliance on the judgment of **SCG Contracts (India) Private Limited (supra)** and **Prakash Corporates (supra)**. It is urged that judgment of **SCG Contracts (supra)** was explained in the case of **Prakash Corporates (supra)** and it was made clear that in '*extraordinary circumstance*', the maximum period of 120 days for filing written statement can very well be relaxed. In addition, the order of Supreme Court passed in **SLP (Civil) No.19754 of 2022 (Raj Process Equipments and Systems Pvt. Ltd. & Ors. vs. Honest Derivatives Pvt. Ltd.)** and a Division Bench order passed by this Court in **MP No. 6026 of 2022 (Telecommunications Consultants India Limited vs. Rajendra Singh Kiledar Construction Private Limited and others)** were pressed into service by contending that the Court interfered with the order of Court below in the said matters and directed the Court below to take written statement on record. He lastly submitted

that as held in **Prakash Corporates (supra)**, the time limit can be relaxed in extraordinary situations and in the instant case extraordinary situation was that there was summer vacations before the Court below and therefore, written statement could not be filed.

4. Sounding a *contra* note, Shri Oberoi, learned counsel for the respondents supported the impugned order and urged that in **SCG Contracts (supra)**, it was made clear that 120 days is the outer limit and if within aforesaid period written statement is not filed, the written statement cannot be taken on record. So far judgment of **Prakash Corporates (supra)** is concerned, it is urged that in '*peculiar and extraordinary circumstances*' available therein, the Court relaxed the time limit of 120 days. He made an effort to distinguish and explain the order passed by this Court in **Telecommunications Consultants India Limited (supra)** by contending that the said matter was not a commercial suit when initially filed before the Court. Indeed, it was a civil suit which came on transfer before the Commercial Court and was then registered as commercial suit. Since, sub-section 4 of Section 15 of the Commercial Court Act was not complied with, in that fact situation, this Court interfered with the matter.

5. The parties confined their arguments to the extent indicated above.

6. We have heard the parties at length and perused the record.

7. The point involved in this case is no more *res integra*. Before dealing with the point, it is apposite to record that during

the course of hearing, learned counsel for the parties jointly and fairly admitted that findings given by Court below regarding service of notice, appearance of petitioners/defendants before Court below and last date of filing of written statement etc. are not in dispute. It is admitted by Shri Patel, learned counsel for the petitioners during the course of argument that if 120 days are counted for filing written statement from the date of service of summon, it comes to an end on 21.07.2023.

8. In **SCG Contracts(supra)**, the Apex Court, in no uncertain terms held as under:-

“8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. 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.”

Equally, in Order 8 Rule 1, 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 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.”

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact 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 in Order 8 Rule 10 also adding that the court

has no further power to extend the time beyond this period of 120 days.”

(Emphasis supplied)

9. The aforesaid judgment was considered in **Prakash Corporates (supra)** and in Paras - 16 to 18 of the said judgment, it was made clear that the principle laid down regarding expiry of mandatory period of 120th day is a principle of law laid down which is mandatory and binding. The only relaxation given was because of Covid-19 pandemic, which was treated to be an ‘*extraordinary situation/circumstance*’ in Paras 17 & 18 of the said judgment. We are unable to equate the ‘summer vacations’ which are routine in nature with ‘Covid-19 situation’. Even otherwise, it is noteworthy that summer vacations came to an end in any case in June, 2023 whereas petitioner/defendant had time to file written statement till 21/07/2023. Thus, there exists no extraordinary circumstance in favour of the petitioners.

10. In **Prakash Corporates (supra)**, the Apex Court opined that :-

“22. This Court also made it clear that these mandatory provisions cannot be circumvented even by recourse to inherent powers under Section 151CPC while observing as under : (*SCG Contracts case*[*SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.*, (2019) 12 SCC 210 : (2020) 1 SCC (Civ) 237] , SCC p. 217, para 16)

“16. ... Clearly, the clear, definite and mandatory provisions of Order 5 read with Order 8 Rule 1 and Rule 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.”

23. If the aforesaid provisions and explained principles are literally and plainly applied to the facts of the present case, the 120th day from the date of service of summons came to an end with 6-5-2021 and the defendant, who had earlier been granted time for filing its written statement on payment of costs, forfeited such right with the end of 120th day i.e. 6-5-2021. However, it is required to be kept in view that the provisions aforesaid and their interpretation in *SCG Contracts [SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210 : (2020) 1 SCC (Civ) 237]* operate in normal and non-extraordinary circumstances with the usual functioning of courts. It is also noteworthy that the aboveresferred provisions of CPC are not the only provisions of law which lay down mandatory timelines for particular proceedings. The relevant principles, in their normal and ordinary operation, are that such statutory timelines are of mandatory character with little, or rather no, discretion with the adjudicating authority for enlargement.

24. The question in the present case is, as to whether the said provisions and principles are required to be applied irrespective of the operation and effect of other orders passed/issued by the courts under the force of aberrant, abnormal and extraordinary circumstances? In our view, the answer to this question cannot be in the affirmative for a variety of reasons, as indicated *infra*.

(Emphasis supplied)

11. The judgment of **SCG Contracts (supra)** and **Prakash Corporates (supra)** will not improve the case of the petitioners. On the contrary, a conjoint reading of the principles laid down in both the orders aforesaid makes it clear that limitation of 120 days is indeed mandatory in nature within which written statement must be filed.

12. We will be failing in our duty, if we fail to consider the order of this Court in **Telecommunications Consultants India**

Ltd. (supra). A plain reading of order shows that a Class - B Civil Suit was filed before District Court, Betul, which came on transfer to Commercial Court, Bhopal. It was re-registered as commercial suit at Bhopal. Thereafter, the Commercial Court was required to prepare a fresh timeline in consonance with sub-section (4) of Section 15 of the Commercial Court Act. Since no such time line was prepared as per Section 15(4) of the said Act and the Commercial Court counted the limitation for filing written statement on the basis of relevant date of said civil suit which was filed at Betul, this Court interfered with the matter and allowed the written statement to be taken on record. In the instant case, the commercial suit was filed by plaintiffs before the Commercial Court. Similarly, in **Raj Process Equipment's (supra)** also, the litigation was in fact a suit for damages and not a commercial suit and therefore, it cannot be said that principle laid down in **SCG Contracts (supra)** will not hold the field.

13. In this view of the matter, in our opinion, the Commercial Court has taken a plausible view which is in consonance with law. Thus, there exists no ingredient on which interference can be made under Article 227 of the Constitution.

14. The Misc. Petition fails and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(VIVEK JAIN)
JUDGE