



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/SPECIAL CIVIL APPLICATION NO. 10439 of 2023  
[On note for speaking to minutes of order dated 26/10/2023 in  
R/SCA/10439/2023 ]**

=====

KALPATARU PROJECTS INTERNATIONAL LIMITED  
Versus  
SSA PROJECTS PVT. LTD.

=====

Appearance:

MS SHAILIE S JOSHI(11582) for the Petitioner(s) No. 1  
MUNJAAL M BHATT(8283) for the Petitioner(s) No. 1  
KRISHAL H PATEL(9644) for the Respondent(s) No. 1

=====

**CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA  
and  
HONOURABLE MR. JUSTICE DEVAN M. DESAI**

**Date : 07/11/2023**

**ORAL ORDER**

**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

The present Special Civil Application which was allowed as per judgment pronounced on 26.10.2023, is placed before the court pursuant to a Note for speaking-to-minutes filed by learned advocate for the petitioner.

2. Learned senior advocate Mr. M. R. Bhatt for the petitioner pointed out the contents of the Note of speaking-to-minutes, which is as under, extracting the relevant part,

“2. In this connection, it is humbly submitted that along with the delay condonation application, the petitioner abovenamed had already presented the written statement dated 9.7.2019 before the Hon’ble Court below on 7.10.2019.

3. In light of the above, it is humbly submitted that since the delay has been condoned by this Hon’ble Court, only a consequential direction for taking the written statement on record may be passed. Thus, no fresh direction for filling the written statement is required.”



3. Learned advocate Mr.Krishal Patel for the respondent was fair enough not to dispute the contents of Note for speaking-to-minutes to state before the court that written statement was already placed on record of the court concerned alongwith the condonation application.

4. In view of the above, 'further order' recorded below the judgment dated 26.10.2023 in Special Civil Application No. 10439 of 2023 shall stand deleted. The Court below shall act in accordance with what is held and laid down in the judgment.

5. The Note for speaking-to-minutes is accordingly disposed of.

6. At this state, learned senior advocate pointed out the following line from para 5.7.5 from the judgment, "There is no reason that the situations like loss of papers, non-availability of physical record of the case, non-availability of the court or non-listing of the case could be classified as situational categories where the principles of *dies non juridicus* would apply", to point out that sentence requires re-framing.

7. In order to avoid lack of clarity, if at all there is, the said sentence occurring in para 5.7.5 shall read as under,

"The situations like loss of papers, non-availability of physical record of the case, non-availability of the court or non-listing of the case could be classified as situational categories where the principles of *dies non juridicus* would apply."

**(N.V.ANJARIA, J)**

**(D. M. DESAI, J)**

C.M. JOSHI



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 10439 of 2023**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE N.V.ANJARIA**  
and  
**HONOURABLE MR. JUSTICE DEVAN M. DESAI**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

=====

KALPATARU PROJECTS INTERNATIONAL LIMITED  
Versus  
SSA PROJECTS PVT. LTD.

=====

Appearance:

MR MANISH BHATT, SR.ADVOCATE for MS SHAILEE S JOSHI(11582) for the Petitioner(s) No. 1

MUNJAAL M BHATT(8283) for the Petitioner(s) No. 1

KRISHAL H PATEL(9644) for the Respondent(s) No. 1

=====

**CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA**  
and  
**HONOURABLE MR. JUSTICE DEVAN M. DESAI**

**Date :26/10/2023**

**CAV JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

Heard learned senior advocate Mr. Manish R. Bhatt with

learned advocate Ms. Shailee S. Joshi for the petitioner and learned advocate Kartik Rai assisted by learned advocate Mr. Krishal H. Patel for the respondent.

2. The present Special Civil Application addresses the challenge to order dated 24.03.2023 of learned Judge, Commercial Court, City Civil Court, Ahmedabad, below exhibit 13 in Commercial Civil Suit No. 819 of 2021, whereby the Commercial Court below rejected the application for the petitioner-original defendant refusing the prayer to permit the petitioner to file the written statement.

3. The respondent herein-original plaintiff, is stated to have been engaged in the business of undertaking and executing contracts pertaining to plumbing, water supply and drainage systems. The petitioner is a public limited company in the business of power transmission and infrastructure EPC space executing projects, which deliver the solutions covering designs, testing, manufacturing, fabrication, construction of transmission lines, oil and gas infrastructure and railway projects. The petitioner Kalpataru Projects International Ltd. had its erstwhile name as JMC Projects (India) Ltd. until its merger.

3.1 The petitioner-defendant was granted a contract in the year 2011 by the Ministry of Health and Welfare for construction of All India Institute of Medical Sciences building at Rishikesh. For that contract, the petitioner invited bides by sub-contracting portion of plumbing works. Respondent-plaintiff submitted its bid on 01.03.2011. After negotiations, the respondent was issued letter of award dated 04.03.2011 and finally, the Work Order was issued on 23.09.2011 for a total contract price of

Rs.6,60,00,000/-, which was later amended. The respondent was not in a position to complete work. It vacated the site on 30.09.2012. The petitioner terminated the contract by communication dated 18.12.2012. It is stated that the said termination has not been challenged by the respondent till date.

3.1.1 The respondent thereafter gave its final bill on 28.12.2012 for Rs.1,85,28,190/-. It is the case of the petitioner herein that the said inflated bill was reduced by issuing revised bill dated 07.05.2014 for amount of Rs.1,12,35,217/- which became claim in the instant suit. It is stated by the petitioner that at one point of time, the respondent had invoked the arbitration clause in the contract and filed in the year 2017 a petition for appointment of arbitrator. This petition came to be dismissed on 18.01.2018 by Allahabad High Court on the ground of lack of territorial jurisdiction.

3.1.2 It was thereafter in the background of the above set out facts and events that the respondent instituted Commercial Civil Suit No. 48 of 2019, for recovery of Rs. 1,12,35,217/- against the petitioner.

3.2 As the controversy relates to right to file written statement by the petitioner-defendant in the Commercial Suit, the relevant provisions of the Code of Civil Procedure, 1908, as applicable to the Commercial Suits in view of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, brought into force on 23.10.2015, incorporating the amendments in the Code of Civil Procedure may be highlighted.

3.2.1 By virtue of relevant sub-clauses of clause 4 of the Schedule to the Commercial Courts Act, 2015, the provisions of Code of Civil Procedure in Order V Rule 1 (1), Order VIII Rule 1 and Order VIII Rule 10, CPC, concerning the time period within which the written statement could be filed, as also the consequences of default, came to be amended in their application to the suit of the commercial nature.

3.2.2 After amendment, Order V Rule 1, CPC, reads as under, wherein the Proviso came to be amended.

*“Order V Rule 1*

*1. Summons. - (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:*

*Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:*

*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 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.*

*(2) A defendant to whom a summons has been issued under sub-rule (1) may appear:-*

(a) in person, or  
(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or  
(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.”

3.2.3 In order VIII Rule 1, CPC which reads as under, the Proviso was amended as stated herein below,

“Order VIII Rule 1

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.”

3.2.4 Similarly, in Order VIII Rule 10, CPC the same Proviso was again added by way of amendment. The entire provision is as under,

*“Order VIII Rule 10*

*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 that no Court shall make an order to extend the time provided under rule 1 of this Order for filing of the written statement.”*

3.2.5 The written statement is required to be filed within 30 days reckoned from the date of services of summons in the suit. Further 90 days are allowed for filing of written statement, making total 120 days to be the permissible period for filing the written statement. The Court has the power to allow the defendant to file the written statement after 30 days, provided the Court finds sufficient cause for not filing the written statement within 30 days. In other words, total 120 days are permitted within which the written statement could be filed in commercial suit.

3.3 Whether in the facts of the present case, the written statement could be said to have been filed within 120 days and whether the said time limit could be said to have been observed by the defendant, is to be ascertained from the operative facts. Therefore, the facts and events may be counted and highlighted.

3.4 The commercial suit was filed and registered on 18.03.2019 with the said Commercial Court, Ahmedabad numbered as Commercial Civil Suit No. 48 of 2019, in which the



summons was issued. The summons was received by the petitioner-defendant on 19.03.2019 through e-mail. The petitioner was therefore required to file its written statement on or before 19.04.2019 as per Order V Rule 1, CPC. The petitioner made an application at Exhibit 9 seeking permission to file written statement within the residuary period of 90 days. This application was granted on 11.05.2019. The Court was satisfied with the cause pleaded by the petitioner-defendant to be unable to file the written statement within initial 30 days.

3.4.1 In view of the State Government Notification dated 15.04.2019 and 03.06.2019, the commercial suit instituted as above before the Commercial Court, City Civil Court, was transferred to the Court of Chief Judge, Small Causes Court, which was invested with the jurisdiction. It was done by passing order dated 17.06.2019 below exhibit 1. The said order recorded that the parties would remain present before the Small Causes Court on 10.07.2019.

3.4.2 It was stated by the petitioner that on 09.07.2019, written statement was ready and was notarised. The defendant appears to have filed application under Order VII Rule 11, CPC, which was also notarised on the same day. It is the case of the petitioner that it was not in a position to file the written statement inasmuch as the suit stood transferred from the Commercial Court to the Small Causes Court awaiting the allotment of registration number at the Small Causes Court.

3.4.3 Though the order dated 17.06.2019 below exhibit 1 transferring the suit, mentioned about the posting of the suit proceedings on 10.07.2019 before the Small Causes Court

concerned, on 10.07.2019, the suit did not get listed before the Small Causes Court. The 120 days period for the purpose of filing a written statement, reckoned from the date of service of summons got over on 19.07.2019.

3.4.4 It was only on 19.08.2019 that the suit was listed before the Small Causes Court as Commercial Civil Suit No.303 of 2019. The petitioner stated that the parties were not informed about the date of hearing. Therefore, the notice was issued informing the next date of hearing to be 07.10.2019. As per the case of the petitioner, it was on 07.10.2019 that the clarity surfaced about the posting and proceeding of the suit.

3.4.5 It is the case that it was the first available opportunity, which was on 07.10.2019 that the suit was posted before the Small Causes Court that the written statement could have been filed. The petitioner presented the written statement on 07.10.2019. He filed the application Exhibit 13, seeking to condone the delay in filing the written statement as also an application Exhibit 14 under Order VII Rule 11. The application Exhibit 13 was rejected. The present petition came to be filed.

3.5 The order dismissing exhibit 13 application and in turn, negating the prayer to permit to file the written statement came to be decided on 24.03.2023. In between, the events took place in the proceedings, which are mentioned in a nutshell to complete the overview of the facts.

(i) Reply was filed by respondent-plaintiff (exhibit 13) on 23.12.2019. The petitioner filed rejoinder on 27.01.2020.

(ii) On 19.02.2020 and 16.03.2020, hearing of Application

exhibit 13 was adjourned. Thereafter, due to the Covid-19 Pandemic period intervening, the case was not heard.

(iii) The suit was again transferred from the Small Causes Court to the City Civil Court and came to be registered anew as Commercial Civil Suit No. 819 of 2021.

(iv) While the Rojkam reflected the fortification of the above dates, it was further indicated that on different dates, learned advocate for the respondent-plaintiff did not remain present and despite the presence of advocate for the petitioner, the suit proceedings got adjourned for hearing of Exhibit 13 and Exhibit 14 from time to time.

(v) The Rojkam further showed that on 22.08.2022, the Court recorded absence of advocate of the respondent and granted last opportunity to address submissions of exhibit 13. The proceedings were again adjourned on 11.10.2022 to 31.12.2022, due to some reason of absence of advocate for the respondent plaintiff.

(vi) The petitioner stated that on 20.01.2023, no arguments were heard on exhibit 13. Learned advocate for the petitioner, it was stated, requested the Court to pass appropriate orders in view of the repetitive absence of learned advocate for the respondent.

(vii) While learned advocate for the respondent-plaintiff did not remain present even thereafter, which is reflected in the Rojkam, the court passed order below Exhibit 13 on 24.03.2023 dismissing the application.

3.6 There occurred due to above facts, events and sequence,

delay of 111 days beyond 120 days' period. The delay was not condoned by the Court below.

4. Learned advocate for the petitioner assailing the impugned order, submitted that it was not the fault of the petitioner that it could not file the written statement as the proceedings of the suit were not physically transferred and therefore, they were not available at the transferred court - the Small Causes Court between the period from 10.07.2019 to 19.08.2019. The posting of the suit on 07.10.2019 only was informed to the petitioner, it was submitted, and the date 19.08.2019 was not known.

4.1 Learned senior advocate for the petitioner relied on the principles enunciated by the Supreme Court in **Prakash Corporates vs Dee Vee Projects Limited [(2022) 5 SCC 112]**. He next relied on the decision of the Division Bench in **Cube Construction Engineering vs Surat Municipal Corporation**, which was **Special Civil Application No.3849 of 2020, decided on 31.03.2023**, was pressed into service, in which case, it was submitted, the written statement could not be filed by the defendant, as on account of absence of plaintiff, the proceedings of suit could not be taken up by the Court, which was marking the expiry of 120 days.

4.2 On the other hand, learned advocate for the respondent referred to the provisions of the Commercial Courts Act, providing for limitation to file the written statement. He submitted that the period prescribed was a mandatory requirement. It was submitted that general consideration of equity or fairness would not enable the commercial courts to permit the filing of written statement beyond 120 days even if it

so desires since it would be against the mandate of the legislature. He relied on the decision of the Supreme Court in **Raghunath Rai Bareja And Another vs Punjab National Bank [(2007) 2 SCC 230]** to highlight the principle that when there is a conflict between law and equity, it the law which has to prevail, in accordance with the Latin maxim '*dura lex sed lex*', which means 'the law is hard, but it is the law'.

4.2.1 Learned advocate for the respondent relied on the decision of the Bombay High Court in **Notice of Motion Commercial Division No. 196 of 2018, Commercial Suit No. 659 of 2019 (Sony Music Entertainment Pvt. Ltd.)** and in **Commercial Suit No. 29 of 2013 (Colonial Life Insurance Company)** in which the principles regarding the application of the mandatory provision of limitation were discussed. It was submitted that if the statute stipulated that an act should be performed within certain period of time and that it provides no exceptions, the courts must not allow such action to be performed after expiry of time mandated by the statute, directly or indirectly.

4.2.2 The decision of **Basawaraj & Anr v. Special Land Acquisition Officer [(2013) 14 SCC 81]**, was relied on wherein it was observed in paragraph 12 that "it is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds."

4.2.3 Learned advocate for the respondents would rely on the decision of the **SCG Contracts India Pvt. Ltd. Vs. K.S.**

**Chamankar Infrastructure Pvt. Ltd.[2019 12 SCC 210]** as also in **Jayatma Informatics Pvt Ltd Vs. Hcl Infosystems Limited**, which was **Special Civil Application No. 13430 of 2017**, in which cases, it was held and reiterated that the period of limitation of 120 days prescribed in the provisions of Order V Rule 1 and Order VIII Rule 1 of Code of Civil Procedure were mandatory and the departure therefrom was not permissible.

4.2.4 From **SCG Contracts India Pvt. Ltd.(supra)**, learned advocate for the respondent highlighted and relied on the following observations to contend that the court has no power to extend the time beyond maximum 120 days,

*"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 VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days."*

(para 8)

5. In the order dated 18.06.2019 below Exhibit 19, whereby the suit proceedings were transferred from Commercial, City Civil Court, Ahmedabad to Small Causes Court, Ahmedabad, it was provided that the suit would be listed before the Small

Causes Court on 10.07.2019. However, admittedly the proceedings were not listed and the event of listing of the suit did not happen.

5.1 A copy of the Rojkam figures on the record, from which, it could be seen that as per entry in the Rojkam dated 19.08.2016 recorded by the Small Causes Court, it was mentioned that the record and proceedings of the Commercial Suit in question from the City Civil Court reached the Small Causes Court only on 19.08.2019.

5.1.1 In other words, though the proceedings of the suit were to be listed on 10.07.2019, it did not become possible due to the non-availability of the record and proceedings, which had not by the time reached the Small Causes Court and reached only on 19.08.2019, as reflected in the Rojkam. The suit was not thus listed before the Small Causes Court as per the date fixed, but was listed on 19.08.2019.

5.1.2 It was therefore nobody's fault nor was in anybody's control that there was no proceeding before the Small Causes Court on that day.

5.1.3 It is petitioner's case remained uncontroverted that it was not intimated about listing of suit on 19.08.2019 and it remained without the knowledge. The petitioner knew about listing the proceedings on 07.10.2019 only. When the suit came to be listed on 07.10.2019, which was the first opportunity for the petitioner to file the written statement and the same was filed on that day. The rojkam shows that neither of the party was aware about the listing of the suit. The rojkam contained the endorsement that it was provided to issue notice to the

parties for intimating the next date of posting of the proceedings.

5.1.4 It was in the meantime that on 19.07.2019, the period of 120 days contemplated in filing the written statement stood expired.

5.1.5 The written statement, as per the asserted and undenied case of the petitioner-defendant, was notarised as back as on 09.07.2019 and was ready to be filed within the period of 120 days. The intention to file the written statement within time period was evident and could be demonstrated on facts. However, it was due to non-availability and non-listing of the proceedings of the suit with the transferee court, and as the suit proceedings were listed after the date after 120 days' period was over, the petitioner was prevented from filing written statement within limitation period.

5.2 The peculiar facts of any case give rise to special situations. In **Prakash Corporates (supra)**, the situation thrown upon before the Apex Court was exponential spread of Covid-19 Pandemic. As the life and affairs in the society had come to a standstill and there was a total lock-down, leading to the closure of the courts also, the Supreme Court by passing suo motu orders, excluded the time period marking the intense pandemic from 15.03.2020 to 02.10.2021. The said period was provided not to be counted for the purpose of applying limitation for filing the proceedings before the Court. The Supreme Court held that the said exclusion would apply to the period prescribed for filing the written statement in the Commercial Suits also. It analytically discussed the principles which provided a rationale



in law for the exclusion or suspension of limitation period.

5.2.1 The Supreme Court highlighted the mandatory provision of time limit regarding filing of written statement in the commercial suit. It was observed that the statutory time limits and the principles for observation thereof flowing from the said provisions would have to be adhered to in their normal and ordinary operation.

5.2.2 The Supreme Court stated,

*"If the aforesaid provisions and explained principles are literally and plainly applied to the facts of the present case, the 120 th day from the date of service of summons came to an end with 06.05.2021 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 120 th day, i.e., 06.05.2021. However, it is required to be kept in view that the provisions aforesaid and their interpretation in SCG Contracts (supra) operate in normal and non-extraordinary circumstances with the usual functioning of Courts. It is also noteworthy that the above referred 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."*

*(para 23)*

5.2.3 The Supreme Court immediately switched over to the context of unparalleled situation of Pandemic to state,

*"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."*

*(para 24)*

5.2.4 In **Prakash Corporates (supra)**, the Chattisgarh High Court had passed administrative order dated 05.04.2020 during the pandemic period. The circular provided the truncated or curtailed functioning of the subordinate courts in view of the pandemic. Directions were issued for limited court functioning, even in terms of hours of working essentially for the purpose of case of urgent nature.

5.2.5 The Supreme Court observed that it was absolutely clear that during the operation of the said order dated 05.04.2020 of the High Court, the subordinate Courts under the superintendence of the High Court of Chhattisgarh, included the Trial Court dealing with the subject matter suit, and the trial court could not have been treated to be functioning in a normal manner and for the whole of normal working days and hours.

5.2.6 The Supreme Court stated, "*The period during which the said order dated 05.04.2021 was operative, could have only been considered dies non juridicus, i.e., the days on which the Courts do not ordinarily sit or carry-on business, particularly in regard to any period of limitation*".

5.2.7 The concept of *dies non juridicus* was explained from P. Ramanatha Aiyar's Law Lexicon, [5th Ed., Vol. 2, p. 1505], extracting with relevance,

*“Dies non. (Lat.) A day which is regarded by the law as one on which no judicial act can be performed, or legal diligence used. (Trayner)*

*(Shortened form of Dies non juridicius). A day not juridical, a day exempt from Court proceedings, such as a holiday or a Sunday.*

*A day on which the Courts do not ordinarily sit or carry on business; a day on which general business may not lawfully be transacted.*

*A day on which a Law-Court is not held.*

*A day that is not counted for some purpose. For example, Saturday and Sunday are not counted as days of the working week.*

\* \* \*

*An abbreviation of the phrase “dies non juridicus”, non-judicial days-days during which the Courts do not transact any business-as Sunday or the legal holidays. (Havens v. Stiles, 56 LRA 736). It is frequently said that Sunday is “die non juridicus”, but this means only that process cannot ordinarily issue or be executed or returned, and Courts do not usually sit, on that day. It does not mean that no judicial action be had on that day. On the contrary, it is laid down in books of authority that warrants for treason, felony and breach of the peace may be issued and executed on that day, (State v. Ricketts, 74 N.C. 187, 193)*

5.3 The Supreme Court viewed that this very concept, namely, the concept of limitation not coming to an end on a day when the Court is closed, or is deemed to be closed, is contained in section 4 of the Limitation Act, which section deals with the very subject of "Expiry of prescribed period when court is closed". The section says that where the prescribed period for any suit, appeal or application expires on a day when the court is closed,

the suit, appeal, or application may be instituted, preferred or made on the day when the court reopens. The explanation to the section mentions that a court shall be deemed to be closed on any day within the meaning of section 4, if during any part of its normal working hours, it remains closed on that day.

5.3.1 Explaining further, the Supreme Court observed,

*"It is thus beyond cavil that if the prescribed period for any suit/appeal/application expires on day when the Court is considered 'closed', such proceedings may be instituted on the re-opening day. Significantly, the Explanation to Section 4 of the Limitation Act, 1963 makes it clear that a day when the Court may not as such be closed in physical sense, it would be 'deemed' to be closed, if during any part of its normal working hours, it remains closed on that day for any particular proceedings or work."*

*(para 36.5)*

5.3.2 Referring to the order dated 05.04.2021 of the Chhatisgarh High Court and pointing out its effect, the court said,

*"As noticed from the relevant parts of the order dated 05.04.2021 (vide paragraph 15 hereinabove) that at the relevant time, limited number of Courts were to function on rotational basis in Raipur and that too, with curtailed working hours from 11:00 a.m. to 2:00 p.m.; and they were to function during full working hours only for bail and remand matters. Having regard to the situation prevalent at the relevant time and the contents as also spirit of the administrative order issued by the jurisdictional High Court, there is nothing to doubt that w.e.f. 06.04.2021, the Court in question could not have been considered functioning normally; and that*

*period of operation of the said administrative order dated 05.04.2021 could have only been considered dies non juridicus for the purpose of the prescribed period for doing anything in the proceedings in that Court."*

*(Para 37)*

5.3.3 The Supreme Court finally observed in paragraph 38 that expecting filing of written statement during such unusual period, during which, no regular business of the Courts was undertaken, would not be practical. The Supreme Court observed that "Any proposition, which suggests that during such non-regular business days of the Trial Court, and rather bleak days for the humanity, the written statement ought to have been filed, could only be disapproved as being impractical and rather preposterous." The pandemic period was of bleak days, in the present case there were blank days when the court of competent jurisdiction did not have record of the case.

5.4 The Division Bench of this Court in **Cube Construction Engineering (supra)**, had the situation where the written statement could not be filed on account of absence of the plaintiff and his advocate, which left the deferment of the proceedings. This court held that it was due to the reason that the defendant remained unavailable since on account of the absence of the learned advocate for the plaintiff, the proceedings of the suit did not take place and the proceedings were adjourned.

5.4.1 It was held,

*"6.3 It is therefore evident that non-filing of written statement on 08.11.2019 by the defendant was due to the circumstances beyond the control of the defendant. Inaction,*

*fault or lapse was not attributable to the defendant that he did not file written statement within stipulated period of 120 days. It was the adjournment of the proceedings for the above reason that the postponement of acceptance of written statement occurred."*

5.4.2 It was further observed and held,

*"6.8 The facts and circumstances of the case are such where the court would not permit the vagaries of procedure and uncertainties in the court proceedings to sacrifice the right of the defendant with whom the written statement was otherwise available and ready to be filed within the stipulated period of limitation. It was procedural snag which kept the defendant away on 8.11.2019, from exercising its substantive right of defending the suit of filing written statement."*

5.4.3 Against the aforesaid decision in **Cube Construction Engineering (supra), Special Leave Petition (Civil) Diary No.32075 of 2023** was preferred and came to be rejected on 22.08.2023.

5.5 The object of clause of limitation is on one hand to exclude the stale claims from being subjected to litigation, thereby to ensure orderliness in the justice delivery system. On the other hand, the prescription of limitation seeks to ensure that the litigants remain vigilant in seeking ventilation of their grievances.

5.5.1 Lord Halisham, the author of Halsbury's Laws of England, stated the objects in these words,

*"the courts have expressed at least three different reasons for the existence of statutes of*

*limitation; namely: the fact that long dormant claims have more of cruelty than justice in them; the fact that a defendant might have lost the evidence to disprove a stale claim, and the fact that persons with good cause of action should pursue them with reasonable diligence". (Lord Halisham)*

5.5.2 While applying the law of limitation, which would bar the actions by efflux of time, what is to be ensured is that there is a reasonable diligence on the part of the litigant, which in turn would protect the other side from stale claims and the claims were the evidence might have been perished. After the expiry of limitation period, though the cause of action may subsist, it goes dormant, and right to action gets barred.

5.6 The law of limitation could be viewed in their two separate segments, one is the limitation period prescribed for taking action for seeking substantive relief, and on the other hand, the specification of the period for doing certain procedural things and steps in the process of litigation, time bound and time oriented. In a given case, such as period of 120 days for filing written statement in commercial suit, the provision is made by the legislature mandatory in its application.

5.6.1 Even though the legislature has made the particular provision mandatory, the court of law would not allow such provision to apply blindfolded irrespective of compulsive situation and the set of facts which may arise unprecedented, more particularly sticking to a mere letter without its spirit, in application of the provision, it can take toll of substantive rights of the parties by ignoring the compulsive situations arising beyond control.

5.7 Application of laws has to be realistic, not static. It is true that time limit prescribed for filing the written statement in the commercial suit is mandatory, yet the thing to be done within such time could be viewed as procedural. As far as the procedural provisions are concerned, even while not discounting its mandatory nature, they should be allowed to bend to suit the peculiar situation, without sacrificing its crux requirement.

5.7.1 The justice delivery system cherishes to enforce substantive rights of the parties. The system does not exist to encourage procedural wrangles. While respecting the letter of the provision, the spirit should also not be forgotten.

5.7.2 Therefore, even in respect of applying limitation, including the mandatory provisions of limitation period, exceptions are not unknown. The exceptions operate in the area of fraud, disability, concealment and such legal or factual unavoidable and compulsory situations, which may not be exhaustive, if the idea is to protect the substantive rights of the parties by harmonizing the process of law with the fact situation.

5.7.3 One of such exception was the situation created by the Covid-19 Pandemic. In that context, the law was made to operate dynamic by the Supreme Court in **Prakash Corporates (supra)** by applying the principle of *dies non juridicus*. The extraordinary and abnormal period in nobody's control was excluded from the limitation period.

5.7.4 In the present case, as noted, it was non-listing of case and non-availability of the record of the suit, having not been reached to the competent court from the transferred court, became the reason because of which the defendant failed to



tender its written statement within 120 days. The written statement was otherwise ready and available to be tendered. The 120th day fell within the vacuum period where the proceedings of the suit were not available before the Court and when the defendant was not informed of the date, and hence, could not be taken.

5.7.5 The above situation also represents what is considered as *dies non juridicus*-the days on which the Courts would not carry on the business. There is no reason that the situations like loss of papers, non-availability of physical record of the case, non-availability of the court or non-listing of the case could be classified as situational categories where the principles of *dies non juridicus* would apply.

5.8 The circumstances obtained in the present case could be said to be fortuitous circumstance for the defendant, created by quirk of facts and vagaries of the events. The petitioner-defendant was not to be attributed with any fault for the same. Physical non-availability of record became the debilitating factor. The period of extraordinary circumstance, which prevents the litigant to act and disable the court from functioning is indeed to be viewed as "freezing time".

5.8.1 Freezing of time is one of the exceptions perceived when the limitation would not run, and such freezing would occur in extra-ordinary, abnormal and beyond-control situations. For instance, in a given case, the litigant has instituted his case in a wrong court, when the litigant is to refile the case in proper court, the time during which the litigant prosecuted his case before the wrong court or forum is treated as frozen. Section

14 of the Limitation Act is an instance.

5.8.2 Although the law of limitation does not expressly provide of freezing of time, the court as *sentinel qui vive* of justice has to consider the special circumstances of each case to determine whether the time ought to have been treated as frozen in order to do substantial justice.

5.9 The above is the doctrine of postponement or the doctrine of freezing of time. It is the factor of disability, which suspends the action or postpones doing of thing during such freezed time. When such disability or special circumstance is established and for which event, judicial notice could be taken, the time will be treated to have been freezed when the person is placed in the disabled state throughout the period of disability.

6. Again recollecting at this stage the facts of the present case to apply the doctrine of freezing, the suit was not listed on 10.07.2019, which was the listing date, for the reason that the physical record was not transferred. The suit was listed on 19.08.2019, when the record became available. About this date, the parties were not informed. The petitioner-defendant since not aware, could not file written statement. The picture got cleared when it was known that the suit was to be listed next on 07.10.2019. This was first available date/point of time when already ready written statement was filed. This fact situation is fortified by the entries in the Rojkam.

6.1 In the meantime, on 19.07.2019, when the period of limitation of 120 days for filing written statement witnessed a point of terminus, the written statement, which was ready and notarised could not be filed by the defendant. The period from

10.07.2019 to 07.10.2019 shall have to be treated as freezing period. Non-filing of the written statement in between this period will not attach the legal disability for the petitioner-defendant to treat that the defendant did not file the written statement within time. The written statement was submitted to the court and filed on the immediate first date of hearing on 07.10.2019.

7. For all the aforesaid reasons and discussions, the order dated 24.03.2023 passed by the Commercial Court, City Civil Court, Ahmedabad below Exhibit 13 in Commercial Civil Suit No. 819 of 2021, is hereby set aside. The petitioner is permitted to get its written statement on record of proceedings of the suit. The Commercial Court below is directed accordingly.

**(N.V.ANJARIA, J)**

**(D. M. DESAI, J)**

#### **FURTHER ORDER**

At this stage, learned senior advocate Mr. Manish R. Bhatt for the petitioner stated that the petitioner will file its written statement immediately.

It is provided that the written statement pursuant to the present order shall be filed within outer limit of one week.

**(N.V.ANJARIA, J)**

**(D. M. DESAI, J)**