

120 DAYS DEADLINE TO FILE WRITTEN STATEMENT MANDATORY IN COMMERCIAL SUITS.

INTRODUCTION

The Hon'ble Supreme Court of India, vide its landmark judgment in the case of *M/s SCG Contracts India Pvt. Ltd. V/s. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.* (Civil Appeal No. 1638 of 2019 arising out of S.L.P (C) No. 103/2019) held that the 120-day deadline to file the written statement in Commercial Suits is mandatory, thereby, leaving no room for courts to exercise their discretion to relax the same.

BACKGROUND

The advent of The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("the Act") brought in its wake certain amendments ("Amendments") to the Civil Code of Procedure ("C.P.C"). Ordinarily, the Defendant in a Suit has to file its written statement within 30 days from the date of service of the summons. However, the Hon'ble Court may allow the Defendant to file its written statement by granting an extension for a further period of 90 days, after recording the reasons for the delay and on payment of appropriate costs in order to allow the same to be taken on record. In the event the Defendant fails to file its written statement within 120 days, the Defendant shall forfeit the right to file its written statement and the court shall not allow the same to be taken on record. It is pertinent to note that the Court has no further power to extend the time beyond this period of 120 days.

In this instance, by a Civil Appeal, the Appellant (Original Plaintiff) has challenged the two Orders dated 5th December 2017 and 24th September 2018 ("Impugned Orders"), permitting the Respondent (Original Defendant No. 1) to file its written

statement, even though the deadline of 120 days from the date of service of summons had lapsed.

FACTS

A Suit was filed before the Delhi High Court on 10th March 2017 by the Appellant for a claim amounting to Rs. 6,93,63,114/-.

The summons in the Suit was served upon the Respondent on 14th July 2017. Accordingly, the Respondent had time to file its written statement (including extension/s) on or before 11th November 2017, which is when the statutory period of 120 days to do so expired.

In the meanwhile, however, an application under Order VII Rule 11 was filed for the Plaint to be rejected in its entirety. The said application came to be rejected vide an Order dated 5th December 2017 ("First Impugned Order"). In the absence of the Appellant and on a request made by the Respondent's counsel, the Hon'ble Court extended the time limit for filing the written statement in the matter to 15th December 2017, subject to payment of Rs. 25,000/- to the Appellant. Accordingly, the Respondent filed its written statement on 15th December 2017.

Thereafter, the First Impugned Order was challenged by the Appellant, stating that the written statement could not be taken on record considering the fact that 120 days had lapsed from the date of service of summons of the Suit.

Vide Order dated 24th September 2018 ("Second Impugned Order"), the Learned Single Judge upheld the First Impugned Order, on the grounds that the First Impugned Order had attained finality and that

even though the provisions of law may provide otherwise, the written statement must be taken on record.

In light of the aforesaid circumstances, the Appellant filed a Special Leave Petition ("S.L.P") against the Impugned Orders.

ISSUE FOR CONSIDERATION

The question that arose for consideration before the Supreme Court was that in light of the Amendments made in the C.P.C, whether the written statement could be allowed to be taken on record despite the fact that 120 days had elapsed from the date of service of summons.

APPELLANTS' CONTENTION

The Amendments made in the C.P.C provide for an express consequence of non-filing of the written statement and that the provisions of Order VIII Rules 1 and 10 can only be said to be mandatory in nature and not directory.

RESPONDENTS' CONTENTIONS

It was the Respondents' contention that as an application under Order VII Rule 11 had been filed and the same had to be heard before trial of the Suit could commence, it was clear that the written statement could not be filed during that period of time. It was further contended that by the First Impugned Order, the Respondent was allowed to file its written statement beyond 120 days, which was an act of the Court and the same should not prejudice the Respondent and in such a case, where severe unjust consequences could be suffered by a party due to an act of the Court, Section 151 of the C.P.C which preserves the inherent powers of the Court could be invoked.

FINDINGS AND CONCLUSION

The Supreme Court has held as follows:

1. Filing of a Written Statement in Commercial Suits within 120 days is mandatory.

Upon a review of the provisions of Order V Rule 1(1) and Order VIII Rules 1 & 10 of the C.P.C as amended by the Act, the Supreme Court held that the written statement is to be filed within 30 days from the date of service of summons and a grace period of 90 days may be granted; in which, a court can allow a written statement to be filed only after recording the reasons for the delay and upon imposition of appropriate costs. In the event that the written statement is not filed within 120 days from the service of summons, the Defendant shall forfeit the right to file the written statement and the court shall not allow the same to be taken on record.

2. Inherent powers of the court cannot be used to circumvent a procedural provision.

The Supreme Court relied upon *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal* [(1962) Suppl 1 SCR 450] and in view of the same held that when there is a special provision in the C.P.C which deals with a specific procedure, the same cannot be circumvented by taking recourse to the inherent powers of the court. In this case the provisions of Order V read with Order VIII Rules 1 and 10 are definite and mandatory provisions, the consequences arising out of which cannot be dodged by taking recourse to the inherent powers of the court to do the contrary of what is stated therein.

3. An application filed under Order VII Rule 11 of the C.P.C cannot be used as a defense for non-filing of written statement within the statutory period.

The Supreme Court held that the proceedings

carried out under Order VII Rule 11 are independent of the filing of a written statement once a suit has been filed. It was further held that the pendency of an application filed under Order VII Rule 11 cannot be used as a ruse for retrieving the lost chance to file the written statement. The said view was upheld in *R.K Roja Vs. U.S Rayudu and Anr.* [(2016) 14 SCC 275].

By this landmark judgment of the Supreme Court of India, it is now mandatory for a Defendant in a Commercial Suit to file its written statement within 120 days (including extension/s) from the date of service of summons failing which the Defendant shall forfeit its right to do so. Despite the aforesaid Amendments carried out in the C.P.C, courts were at their discretion, allowing a written statement to be filed beyond 120 days. This judgment leaves no room for the courts to exercise their discretion and relax the deadline of 120 days (including extension/s) and is a positive step towards expediting the litigation process in India.

COMMENTS

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice
