

KABC170020822024



**IN THE COURT OF LXXXII ADDL.CITY CIVIL &  
SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU  
(CCH-83)**

**PRESENT: SRI. VIDYADHAR SHIRAHATTI, L.L.M.,  
LXXXII ADDL.CITY CIVIL & SESSIONS  
JUDGE,**

**BENGALURU.**

**Com.O.S.No.1045/2024**

**Dated on this 03<sup>rd</sup> Day of September 2025**

**Plaintiff                    M/s Tenacity Logistics.**

**// versus //**

**Defendant                M/s Chariot International Pvt.  
Ltd.**

**ORDERS ON I.A. NO. 2**

The Defendant filed this application on 24.06.2025 under Section 148 of CPC for seeking direction a relief of extend the time to file written statement by one week in the interest of justice and equity.

**2.** In accompanying affidavit the Defendant stated on oath that, summons served to the Defendant on 25.02.2025. Hence, the plaint and document served to the Defendant on 24.03.2025. The relevant documents have already been forwarded to the Defendant's office for obtaining the signatures of the authorised signatory. However, currently the Defendant is travelling out of station and is expected to return within a few days. If the application is allowed the plaintiff will not put any hardship or injury. However, if rejected the Defendant caused to great loss. Hence, he prayed to allow the application.

**3.** The Defendant also filed an affidavit on 09.07.2025 and taken a contention that, the Defendant was served only the summons from this court pertaining to the instant case on 25.02.2025. The said summons was not accompanied by a copy of the plaint nor did it have any other documents accompanying it. Hence, he has advised to state that, the service of summons was defective and not in accordance with law. The date of appearance as mentioned in the summons was 18.03.2025. The defendant has instructed his counsel to enter appearance on 18.03.2025. But, the counsel filed a memo of appearance undertaking to file vakalathnama and also instructed to obtain the plaint and

documents in order to file a written statement. However, this court has directed the defendant to file the vakalat as it cannot direct service of the copies without the defendant filing vakalathnama. Hence, a short date was given to file the vakalathnama on 24.03.2025 and collected the copy of the plaint and documents. The limitation to file written statement from dated 24.03.2025 and not earlier since the defendant not collect the copy of the plaint and documents.

**4.** Per contra, the Plaintiff has filed detailed objection stated that, the application filed by the Defendant is not maintainable as the same is not accompanied with the affidavit by correct person. The defendant only to drag the proceedings and delay the process by restricting the plaintiff to enjoy the fruits of the other. Hence, the defendant seeking one week time for filing of the written statement is not permissible as per law as maximum time for filing of the written statement is 120 days from the date of service of summons/notice and in the present case the summons was served on 25.02.2025 and that 120 days will end on 24.06.2025. Hence, such mandatory period is expired. Under these circumstances, the Plaintiff is prayed to dismiss the application.

**5.** I have heard the arguments of the both plaintiff and Defendant. The Counsel for the defendant has relied following Judgments.

1. In 2007 (9) SCC 466 between Nahar Enterprises vs. Hyderabad Allwyn Limited.

2. In 2024 SCC Online Del 6661 between Vikrant Khanna vs. Amita Lamba.

3. In W.P. No. 58492-58494/17 KAR HC between Chandrashekar vs. Pramila.

4. In SLP (C) No. 5383/2020 between National Insurance Co.Ltd vs. M/s Nation Building Construction India Limited.

**6.** Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

1. Whether the application filed by the Defendant without affidavit is maintainable ?
2. Whether the application filed by the Defendant under Section 148 of CPC for extension of period for written statement is deserves to be allowed ?
3. What Order?

**7.** My findings are as follows:-

Point No. 1 and 2: - In the Affirmative.

Point No. 3 : - As per my final orders for  
the following reasons.

### **REASONS**

**8. Point No. 1:** - The present application filed by the Defendant has accompanied with memorandum of facts of the counsel for the defendant. The Plaintiff objection is that, the application filed by the Defendant is not maintainable as the same is not accompanied with the affidavit by correct person. The application filed by the Defendant is an Interlocutory application as defined under Rule 7 of Karnataka Civil Rules of Practice. Chapter -3 of Karnataka Civil Rules of Practice deal with Interlocutory matters. The Rule 18 (2) speaks as thus:

All facts, on which an applicant relies for making the prayer or obtaining the relief sought in the application, shall be set out in an affidavit accompanying the application. Where, however, the facts on which the application is based appear from the records of the case in the Court or relate to any act or conduct of the applicant's pleader himself, the Court may permit a memorandum of facts

signed by the applicant's pleader to be filed instead of an affidavit:

Provided that it shall not be necessary to file any affidavit but only a memorandum of facts signed by the pleader in interlocutory applications seeking any relief other than the relief's of temporary injunction, attachment, arrest, appointment of guardian or the appointment of receiver or amendment of a pleadings.

**9.** This application is filed for seeking for extension of time to file a written statement which is well within the knowledge of the counsel for the Defendant. However, as per the proviso there shall not be a necessary to file any affidavit if pleader himself having a knowledge and may proper to file memorandum of facts signed by the applicant's pleader to be filed instead of an affidavit. Though the extension of applicant under Section 48 is law provided. Hence, the memorandum of facts is sufficient, as per Rule 18. **Accordingly, I answer this point in the Affirmative.**

**10. Point No.2:** The Defendant has taken a contention that, he was filed a memo of undertaking on behalf of Defendant on dated 25.02.2025 as the Defendant was not received plaint copy of any documents. On 25.02.2025 this court has served the documents plaint copy to the

Defendant. Hence, the time of filing a written statement were started on same day. Therefore, without documents and plaint pleadings, the defendant is not able to file written statement. Hence, as per the ratio laid down by the Hon'ble Supreme Court and Hon'ble High Courts the Defendant is entitle to file written statement.

**11.** At the juncture it is relevant to extract the proviso of Order 8 Rule 1 for period of filing the written statement which reads as thus:

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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

**12.** The above provisions clearly indicates that, the Defendant have to file written statement from service of summons within 30 days. If he has not filed within 30 days he should assigned a proper reason and file a written

statement after service of summons within 120 days. Beyond 120 days the defendant is not having any rights to file written statement. In the present case we should analyse that, whether the defendant summons was duly served on 25.02.2025 or limitation starts from 24.03.2025. As per the version of the Plaintiff the suit summons were served on 25.02.2025 through RPAD. Therefore, the period of limitation starts from 25.02.2025. Hence, the extension of period by filing an application on dated 24.06.2025 is not admissible.

**13.** The contention of the Defendant is that he has served the copy of the summons, but not received the plaint and documents. The order sheet on dated 24.03.2025 reveals as thus:

Case is called out in open Court.

Advocate for Plaintiff present.

Sri. Poornachandra B. Pattar, Advocate filed vakalath on behalf of Defendant along with Certified true copy of Board Resolution. Copies of Plaint and documents furnished to counsel for Defendant.

For W/s, documents and Statement of Admissions and Denials by Defendant.

Call on 21.04.2025.

**14.** The such extract of the order sheet clearly reveal that, the Defendant has received the plaint and documents. The office note on dated 25.02.2025 reveals that, SS to Defendant by RPAD acknowledgment returned with seal and signature dated 25.02.2025. The appearance of the date as mentioned not on 18.03.2025. However, the suit summons were issued on 18.02.2025. Therefore nowhere the plaintiff stated that, the plaint and documents are furnished to the Defendant. The question arose that, whether the suit summons was duly served to the Defendant and not to be appeared.

**15.** Order 5 of CPC deals with issue and service of summons. Order 5 Rule 1 of CPC reads as thus:

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:

Order 5 Rule 6 of CPC reads as thus:

Fixing day for appearance of Defendant:  
The day shall be fixed with reference to the

current business of the court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

**16.** The order 5 Rule (1) and (6) reveals about the service of summons and date of appearance of the Defendant. However, the date is not properly fixed for appearance of the Defendant. Even, though the service of summons has not served properly.

**17.** The counsel for the Defendant has relied the Judgment of Hon'ble Supreme court for service of summons in ***Nahar Enterprises vs. Hyderabad Allwyn Limited (Supra)*** case, wherein stated about, the summons is sufficiently served and calling upon the Defendant to appearing the court to file written statement. The extract of the Para No. 8,9 and 10 reads as thus:

Para No.8: The Learned Counsel appears to be correct. When a summons is sent calling upon a defendant to appear in the Court and file his written statement, it is obligatory on the part of the court to send a copy of the plaint and other documents appended thereto, in terms of Order 5, Rule 2 CPC.

Order 5 Rule 2 of the CPC reads as under:  
"Copy of plaint annexed to summons - Every summons shall be accompanied by a copy of the plaint."

Para No.9: The learned Judge did not address itself the question as to how a defendant, in absence of a copy of the plaint and other documents, would be able to file his written statement. The Court, furthermore, in our opinion, committed a manifest error in so far as it failed to take into consideration that the summons having been served upon the appellant after the date fixed for his appearance, it was obligatory on its part to fix another date for his appearance and filing written statement and direct the plaintiff to take steps for service of fresh summons. This legal position is explicit in view of the provisions of order 9 Rule 6 (1) (C) of CPC which reads:

Para No.10: "When summons served but not in due time - if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant."

**18.** By looking to the above observations of the Hon'ble Supreme court the service of summons was not duly served in accordance with law. Therefore, the date of service of summons to be taken into consideration. The Hon'ble High

Court of Karnataka in **Writ Petition No. 58492-58494/2017 (GM-CPC) Order dated 13.03.2018** between **Sri. Chandrashekar and others vs. Smt. K. Pramila** wherein it is held in para 7 as thus:

Firstly, with regard to the defective service of summons, argument of the petitioners counsel cannot be accepted. The defective service has a different meaning altogether. Under Order 5 Rule 2 C.P.C., every summon shall be accompanied by a copy of the plaint. The provision was substituted by amendment to C.P.C. on 01.07.2002 and it does not say that copy of the document must be enclosed with the plaint. Conjoint reading of Order 6 Rule 1 and 2 and Order 7 Rule 14 of CPC gives a different meaning. Plaint may refer to documents, but they are separate, for the plaint should only contain material facts. But the Hon'ble Supreme Court while interpreting Order 5 Rule 2 C.P.C., in the case of Nahar Enterprises Vs. Hyderabad Allwyn Ltd. And another; reported in (2007)9 SCC 466 has held that it is obligatory on the part of the Court to send a copy of the plaint and other documents appended thereto.

**19.** As the date of service of summons is as per the amendment of Order 5 Rule 2. After summons shall be accompanied by a copy of plaint and the documents must be enclosed with the plaint.

**20.** The Judgment of Hon'ble Delhi High Court in Vikrant Khanna and Others vs. Amita Lamba and another (supra) case. The service of summons of defendant, the suit cannot be said to be complete unless complete paper book of the suit is supplied to defendants. In para 14 it is observed that:

In my opinion the service of the defendant no. 1 in the suit cannot be said to be complete unless complete paper book of the suit is supplied to the defendant no. 1. Surely it cannot be the position in law that even if the defendant has not been supplied with the paper book of the suit yet the period of 120 days will commence for filing of the written statement failing which the right to file written statement shall stand closed.

**21.** The above extract also reveals about, the service of summons. The Hon'ble Supreme Court in Special Leave to Appeal (C) No. 5383/2020 between National Insurance Company Ltd vs. M/s National Building Construction India Ltd and Others (supra) wherein observed as thus:

"We accept the petitioner's argument on the legal proposition that service contemplated in terms of Order V Rule 2 of the Code would imply service of summons along with the copy of the plaint".

**22.** The above observation of Hon'ble Supreme Court, the service of summons is considered after furnishing the copy of the plaint and all the documents. In the present case, the plaint and documents was furnished as per order dated 24.03.2025. Therefore, the limitation start from 24.03.2025 to file a written statement. The Defendant has filed application on 24.06.2025 and also filed written statement in 2 sets along with statement of truth on dated 04.07.2025. Therefore, the limitation to file written statement within 30 days is over on 23.04.2025.

**23.** The Defendant has taken a contention that, he has seeking one week time to file written statement. The relevant documents have already been forwarded to the Defendant's office for obtaining the signatures of the authorised signatory. The Defendant has been informed that, the authorized signatory is currently travelling out of station and is expected to return within a few days. The signed documents are handed over the counsel for Defendant. In the light of these reasons the defendant has sought one week time. Earlier a filing of the written statement, the application filed under Section 148 was duly extended on dated 21.04.2025. The Defendant has filed his written statement on 04.07.2025. Though the complete

service of summons was held on 24.03.2025. The period was taken by the Defendant from 24.03.2025 on 109 days. Therefore, the objection filed by the Plaintiff to protract the suit is inadmissible. Moreover this court has extended the time on dated 21.04.20025. Though, the Defendant has filed this I.A.No.2 under Section 148 of CPC on dated 24.06.2025 prayed for one week time. Therefore, the defendant is travelling out of station which requires the signature of the Defendants on statement of truth as well as pleadings. Hence, Defendant has assigned proper reason in the memorandum of facts as well as affidavit. Hence, in view of the above observations and by relying the Judgment of the Hon'ble Supreme Court and Hon'ble High Court, I am of the considered view that, the written statement filed by the Defendant within 120 days i.e., 109 days. Hence, the period of filing a written statement for extending time of one week is to be allowed. **Hence, I answer this point in Affirmative.**

**24. Point No.3** : Accordingly, I pass the following;

**ORDER**

***The I.A. No.2 filed by the Defendant under Section 148 of CPC is hereby allowed.***

***The Written statement of the Defendant  
along with Statement of Truth filed on dated  
04.07.2025 is taken on record.***

(Dictated to the Stenographer, typed by her, verified and corrected by me and then pronounced by me in open Court on this the **03<sup>rd</sup> day of September 2025**).

**(VIDYADHAR SHIRAHATTI),  
LXXXII Addl.City Civil & Sessions Judge,  
Bengaluru.**