

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

THIS THE 18TH DAY OF APRIL 2022

**PRESENT:
SRI.DEVARAJA BHAT.M.,B.COM,LL.B.,
LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

IA.NO. VIII

BETWEEN:

Sri. Haribabu .C.

: APPLICANT/2nd DEFENDANT

AND

**M/s ATC Telecom
Infrastructure Private
Limited.**

: OPPONENT/PLAINTIFF

IA.NO. IX

BETWEEN:

**M/s Chaitanya
Electricals.**

: APPLICANT/12th DEFENDANT

AND

**M/s ATC Telecom
Infrastructure Private
Limited.**

: OPPONENT/PLAINTIFF

IA.NO. X

BETWEEN:

Sri. Divyananda M.

: APPLICANT/6th DEFENDANT

AND

**M/s ATC Telecom
Infrastructure Private
Limited.**

: OPPONENT/PLAINTIFF

IA.NO. XI

BETWEEN:

Sri. Manoj Kumar. V.R.

: APPLICANT/5th DEFENDANT

AND

**M/s ATC Telecom
Infrastructure Private
Limited.**

: OPPONENT/PLAINTIFF

IA.NO. XII

BETWEEN:

Sri. Khadar Vali.

: APPLICANT/7th DEFENDANT

AND

**M/s ATC Telecom
Infrastructure Private
Limited.**

: OPPONENT/PLAINTIFF

IN COM.O.S. No. 3436/2015

BETWEEN:

**M/s ATC Telecom
Infrastrcuture Private
Limited.**

: PLAINTIFF

AND

**Sri. Bhopathi and
Others.**

: DEFENDANTS

COMMON ORDERS

I.A. No.VIII is filed under Section 151 of Civil Procedure Code to permit the 2nd Defendant to file his written statement.

I.A. No.IX is filed under Section 151 of Civil Procedure Code to permit the 12th Defendant to file his written statement.

I.A. No.X is filed under Order IX Rule 7 read with Section 151 of Civil Procedure Code to set aside the order placing him as ex parte dated 30.05.2016.

I.A. No.XI is filed under Section 151 of Civil Procedure Code to permit the 5th Defendant to file his written statement.

I.A. No.XII is filed under Section 151 of Civil Procedure Code to permit the 7th Defendant to file his written statement.

2. Since in all these I.As, a common argument is advanced and hence to avoid the repetition, and to save the time, I am passing this Common Order.

3. In the accompanying Affidavit to I.A. No.VIII, the 2nd Defendant has contended as follows:-

That on 18.12.2015 he entered appearance in this case and his Advocate informed him to provide relevant documents for preparing the written statement, that for a period of one and half year his family members suffered lot of health issues and due to the said reason he could not consult his Advocate, that due to some financial difficulties he could not pay fees to his Advocate, that after transfer to this court, due to corona lock down he could not contact his Advocate and hence there is delay in filing the written statement and same may be condoned.

4. In the accompanying Affidavit to I.A. No.IX, the 12th Defendant has contended as follows:-

That on 19.01.2016, he was out of station, that he could not contact his Advocate to prepare written statement, that now he his filing his written statement and the same may be taken on record.

5. In the accompanying Affidavit to I.A. No.X, the 6th Defendant has contended as follows:-

That he has not received any summons and filing of this suit is not within his knowledge, that through an old colleague he

came to no about pendency of this case recently and hence he filed the present application and is allowed.

6. In the accompanying Affidavit to I.A. No.XI & XII, the 5th and 7th Defendant have contended as follows:-

That they have engaged Sri. M.S. Girish as their Advocate, that due to non-availability of their Advocate they were enable to give instruction to file written statement and now they engaged another Advocate and filed written statement and same may be taken on record.

7. The Opponent/Plaintiff has filed detailed objections to the I.A. No.VIII on 06.11.2021 and prayed to dismiss the said application. He has filed separate detailed objections to I.A. No. IX to XII on 11.03.2022.

8. I have heard the arguments of the learned Advocates for both parties.

9. 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 there are good cause for receiving

the written statements of the Defendants No. 2,5 to 7 and 12, after condoning more than 120 days delay in filing the same?

2. What Order?

10. My findings are as follows:-

Point No. 1: - In the Negative.

Point No. 2: - As per my final orders for the following reasons.

REASONS

11. Point No. 1: - This suit was filed on 10.04.2015. In this case, the 2nd and 7th Defendant have entered appearance on 18.12.2015. The 5th and 12th Defendants have entered appearance on 20.11.2015. The Defendant No.6 was placed Ex-parte on 30.05.2016.

12. It is to be noted that, all the Applicants/Defendants have not mentioned when the court has taken their written statement as not filed and how many days delay in filing the written statement from the date of service of summons on them. They have not assigned sufficient reasons for not filing their written statement within time. Further, the 2nd Defendant has not filed Statement of Truth along with the written statement. The 12th Defendant has also not filed Statement of Truth. Though he has filed verifying Affidavit, but the same is

not attested also. The Defendants No. 5 to 7 have also not filed their Statement of Truth along with the written statement. On this ground alone, their written statements cannot be taken on record.

13. The Proviso to the Order VIII Rule 1 of the Civil Procedure Code specifies:-

(i) a maximum limit of 120 days from the date of service of summons to file a written-statement,

(ii) defaulting defendant forfeits the right to file a written statement, and

(iii) court shall not be allowed to take the delayed written statement to be taken on record.

14. Further, as per the Order VIII Rule 10 stipulates that in Commercial suits, "...no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement".

15. The learned Advocate for the Defendants have argued that since this suit is transferred to the Commercial Court during pendency of the proceedings, a fresh time line has to be fixed for filing their written statement and this Court has not fixed any such fresh time lines, they are entitled to file their written statement at this stage also.

16. It is to be noted that this suit was transferred to the CCH-39 the then Commercial Court on 03.03.2018. Thereafter on 10.01.2019, this suit was transferred to this Court. At that time, an amendment application filed by the Plaintiff in I.A. No.VII was pending and the same was allowed on 24.06.2019. Thereafter an opportunity was granted to file additional written statemnet. In spite of the same, none of the Defendants have filed in a such additional written statement. Further I.A. No.II filed under Order VII Rule 11 of Civil Procedure Code was also pending. After, hearing both parties the same was dismissed as per my separate detailed Orders dated 23.08.2021. Thereafter the present Defendants have filed the present applications. In the above circumstances, though fresh time lines were not fixed by the Commercial Court after transfer, as per Section 15 (4) of the Commercial Courts Act, by giving sufficient opportunities to the Defendants, the Commercial Court has deemed to have adhered the said time lines and the procedures in accordance with law. Just because not providing specific fresh time lines, the Defendants cannot take shelter under the said provision for their own default of not filing written statement for more than 4 years after service of summons on them. Hence, their said arguments cannot be accepted.

17. Further, the written statement of the some of the Defendants was taken as not filed before the then Commercial

Court, CCH-39, after transfer of the suit from the regular court. The written statement of the some of the Defendants was taken as not filed before the regular court itself. When such being the case, no fresh timelines to be given for filing written statement to the Defendants under Section 15 (4) of Commercial Courts Act. It is to be noted that the Commercial Courts Act has been brought into force for speedy resolution of commercial disputes. Before coming into force of this Act several matters involving commercial disputes were already pending in regular civil courts. This provision of Section 15 is enacted to transfer those pending cases before Commercial Court. When the matter is filed before Commercial Court, the provisions of this Act apply to it. These provisions are different in many aspects than the procedure which is regularly followed in suits before civil court. The old suits were governed by prevailing law. Therefore, question arises as to what procedure should be applied to transferred suits.

18. Sub-Section (3) and (4) of Section 15 have taken care of procedure to be applied to suits which shall be transfer to Commercial Court from regular civil courts. They say that the procedure of Commercial Courts Act will be made applicable to the stages which are not complete at the time of transfer of the proceedings. Sub-Section (4) empowers the Commercial Court to fix new timelines for further progress of the matter. It is also

made clear in Proviso of Sub-Section (4) that provisions of Order V Rule 1, which requires filing of written statement within maximum 120 days, shall not be applicable to transferred cases and the Court may in its discretion prescribed new timeline for filing of written statement within which the written statement should be filed. On a combined reading of all these provisions, it is very clear that if the stage of filing of written statement is not completed before the regular court, then only a fresh timelines should be fixed. If the said stage is already over before the regular court or after transferred to the Commercial Court, as in the present case, the Defendants cannot insist this Court to fix new timelines after 4 years of non-filing of written statement.

19. Amendments were carried out to the Civil Procedure Code through Section 16 of the Commercial Courts Act, 2015. The Hon'ble Supreme Court in the decision reported in **(2019) 12 - S.C.C. - 210 (M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors)**, (which is relied on by the Advocate for the Plaintiff) has held that these timelines are to be mandatorily adhered to. It held that the Commercial Court dealing with a commercial suit had no discretion to condone delay and could not allow the written statement to be taken on record beyond the mandatory period provided under Order VIII Rule 1 of the Civil Procedure Code. It is held as follows:-

"8. xxxxxx 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."

20. In the said judgment, a Suit was filed before the Delhi High Court on 10.03.2017 by the Appellant for a claim amounting to Rs. 6,93,63,114/-. The summons in the Suit was served upon the Respondent on 14.07.2017. Accordingly, the Respondent had time to file its written statement (including extension/s) on or before 11.11.2017, which is when the statutory period of 120 days to do so expired. In the meanwhile, 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 as per the Order dated 05.12.2017. 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 15.12.2017, subject to payment of Rs. 25,000/- to the Appellant. Accordingly, the Respondent filed its written statement on 15.12.2017.

Thereafter, the said Order was challenged by the Appellant, stating that the written statement could not be taken on record considering the fact that 120 days had elapsed from the date of service of summons of the Suit. The Learned Single Judge upheld the said Order. The Appellant filed a Special Leave Petition against the same. It was the contention of the Defendant in the said case 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.

21. In the said judgment, it is held that 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. The Hon'ble Supreme Court has relied upon the earlier judgment, *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 Civil Procedure Code which deals with a specific procedure, the same cannot be circumvented by taking recourse to the inherent powers of the court, and further held that 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.

22. I wish to refer the decision of the Hon'ble Supreme Court reported in **(2020) 5 - S.C.C. - 757 (New India Assurance Company Limited vs. Hilli Multipurpose Cold Storage Private Limited)**, wherein the Hon'ble Supreme Court has once again held that the statutory timelines being made absolute and non-discretionary. The Hon'ble Supreme Court in the said case answered two queries referred to it. The first of the two queries is that whether the District Forum had the power to extend time for filing response to a complaint beyond 45 days (15 days and plus a 30 day extension) statutory deadline of Section 13(2)(a), Consumer Protection Act, 1986? The Hon'ble Supreme Court held that the legislature by enacting Section 13 of the Consumer Protection Act, 1986 has chosen to remedy the "justice delayed is justice denied" situation that the discretion to extend time to file a response to a complaint has been curtailed beyond a total of 45 days even if in some cases there would be hardships.

23. I wish to refer another decision reported in **(2020) 2 - S.C.C. - 708 (Desh Raj vs. Balkishan (D) Through Proposed LR Ms. Rohini)**, wherein the Hon'ble Supreme Court further examined the legal position and held thus: -

"13. The judgment of Oku Tech (supra) relied upon the learned Single Judge is no doubt good law, as recently upheld by this Court in SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd., but its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes, as the judgment was undoubtedly rendered in the context of a commercial dispute qua the amended Order VIII Rule 1 CPC.

14. As regard the timeline for filing of written statement in a non commercial dispute, the observations of this Court in a catena of decisions, most recently in Atcom Technologies Ltd. v. Y.A. Chunawala and Co. holds the field. Unamended Order VIII Rule 1 CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays".

24. I wish to refer another Judgment of the Hon'ble Supreme Court passed in **Civil Appeal No. 3007 & 3008 of 2020, (Sagufa Ahmed & Ors vs. Upper Assam Plywood Products Pvt. Ltd. & Ors) decided on 18.09.2020**, while clarifying its Order dated 23.03.2020, has observed clearly, categorically and convincingly that the said order extended only the period of limitation and not the period up to which delay can be condoned in exercise of discretion conferred by the statute.

25. The Hon'ble Apex Court has held that the expression prescribed period appearing in Section 4 of the Limitation Act cannot be construed to mean anything other than the period of limitation. It explicitly, elegantly and effectively held that the appellant cannot claim the benefit of the order for enlarging even the period up to which delay can be condoned.

26. I wish to rely a Judgment of the Hon'ble High Court of Karnataka passed in **W.P. No. 201642/2019 (GM-CPC) decided on 04.02.2020 (Krishna Bhagya Jala Nigam Limited and Others vs. A. Prabhakara Reddy and Others)**, wherein the Hon'ble High Court of Karnataka has reiterated that the Defendants have no right to seek extension of time to file written statement beyond 120 days and no discretion vested with the Commercial Court to entertain any applications as filed in the present suit. In view of the said Judgment also, the I.A. No. VIII to XII cannot be entertained.

27. After transfer of all these suits, in view of time lines fixed under the provisions of Civil Procedure Code as amended under Section 16 of the Commercial Courts Act, and the said time lines have to be considered in view of the ratio of the above-mentioned various decisions, this Court has no power to extend the time limit of 120 days as per the Proviso to Order VIII Rule 10 of Civil Procedure Code. Therefore, there are no reasons to

receive the written statement filed by the Applicants after more than 4years of the receipt of summons by the said Defendants. Hence, I answer this **Point in Negative**.

28. Point No. 2: - Therefore, I proceed to pass the following Order.

O R D E R

The I.A. No. VIII to XII are hereby dismissed.

The Defendant No. 2, 5 to 7 and 12 shall pay Rs. 1000/- each as costs to the Plaintiff.

For fixing time lines under Case Management Hearing by 04.06.2022.

(Dictated to the Stenographer, typed by her directly on the computer, transcribed by her, verified by me and pronounced in the open court on **18th day of April 2022**).

(M. DEVARAJA BHAT)
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.