

**IN THE COURT OF THE II ADDL DISTRICT & SESSIONS
JUDGE, MYSURU**

Present: Sri.Hosamani Pundalik,
II Addl. District & Sessions Judge,
Mysuru.

Dated this the 16th day of July 2022

Com.O.S.No.2/2019

Plaintiff :

Chamundeshwari Electricity Supply
Company, Mysuru A wholly owned
undertaking of Govt. Of Karnataka, A
company Incorporated Under the Indian
Companies Registration Act CESC, Mysuru
having its Corporate Office at Projects Wing,
29, Vijayanagar II Stage, Hinkal, Mysuru.

Reptd by its Principal Officer and Authorized
Signatory.

(By Sri.B.P.K., Adv.)

/vs/

Defendant:

Rajashekar & Associates Electrical
Engineers, A partnership Firm Claiming to
be a Partnership Firm, Under the Indian
Partnership Act Unit No.201, Landmark
Plaza, No.229, Lang Ford Road, Bengaluru
reptd by two of its partners

1. Sri.N.Sathyanarayana

2. Sri.Sundeeep Sathyanarayana

(By Sri.K.C.R., Adv)

Order on I.A.**Applicant / Defendant :**

Rajashekar & Associates Electrical Engineers, A partnership Firm Claiming to be a Partnership Firm, Under the Indian Partnership Act Unit No.201, Landmark Plaza, No.229, Lang Ford Road, Bengaluru repled by managing partner N.Sathyanarayana

Respondent / Plaintiff :

Chamundeshwari Electricity Supply Company, Mysuru A wholly owned undertaking of Govt. Of Karnataka, A company Incorporated Under the Indian Companies Registration Act CESC, Mysuru having its Corporate Office at Projects Wing, 29, Vijayanagar II Stage, Hinkal, Mysuru.

Repled by its Principal Officer and Authorized Signatory.

Order on I.A.

This is an application filed by the Defendant under section 151 of CPC seeking permission to file the written statement by condoning the delay.

2. The case of the Defendant in brief is as under:

It is stated in the affidavit filed by the Defendant – N.Sathyanarayana along with I.A. that he is a managing partner of the Defendant concern. Further it is stated that the Plaintiff has filed the suit for recovery of an amount of Rs.2,61,06,505/- and interest of Rs.64,86,214/- from the Defendants firm. Further it is stated that on 13.6.2019 only on perusal of objection filed by the Plaintiff in case No.186/2018 before the MSCFC, Bengaluru upon verifying the details and status of the case from the official website he learnt that the Defendant has been placed exparte and the matter was posted for evidence. Immediately he filed the application to set aside the exparte order as against the Defendant and permit the Defendant to contest the suit. Further it is stated that the alleged dispute in the present suit between the Plaintiff and the Defendant is a commercial dispute, the Plaintiff dispute the said fact filed the present suit as an ordinary suit and the same was numbered as O.S.No.501/2018. The Court allowed the application on 5.8.2019 and set aside the exparte order against the Defendant and further the Court held that the dispute the Plaintiff company and Defendant company is commercial dispute. In view of the amendment to the commercial Dispute Act, the suit has to be tried by the Special Court established under the said Act. The said Court transferred the case to the commercial Court. Further it is stated that he has not received any notice, the advocate who had filed the

Vakalath on behalf of the Defendant received the Court notice to appear in the present matter only during last week of January 2021. Further it is stated that in the affidavit that the Defendant after receiving the court notice appeared before the Court, the matter is still in the trial stage, and he has received notice only in the month of January 2021, the time period to file written statement has not elapsed. Further it is stated that if the application is allowed no hardship or loss would be caused to the other side. On the other hand, if it is not allowed it will cause great hardship and loss to the Defendant which cannot be compensated in terms of money and prayed to allow the application.

3. Per contra it is contended by the Defendant that the application filed by the Defendant is not maintainable either in law or on facts and liable to be dismissed. Further it is stated that the reasons mentioned in the affidavit accompanying the application are false and untenable. The reason also bald and cannot be accepted. Under these circumstances the application filed by the Defendant is wholly meritless and liable to be rejected as the Defendant has filed the written statement after lapse of 120 days. The Court has no discretion to accept the written statement in view of the decision reported 2019 SCC onlone 226 in case of SCG contract India Pvt. Ltd. And KS Chamankar Infrastructure Pvt. Ltd and others and prayed to dismiss the application.

4. Thereafter, I have heard arguments advanced by the learned counsel for the Defendant and that of the learned counsel for the Plaintiff.

5. The points that would arise for my consideration in this case are as under:

(1) Whether the application filed by the Defendant under section 151 of CPC seeking permission to file written statement deserves to be allowed ?

(2) What Order?

6. My findings to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : As per final order for the following

REASONS

7. **Point No.1** :- This is a suit filed by the Plaintiff against the Defendants for recovery of money for an amount of Rs.2,61,06,505/- and interest an amount of Rs.64,18,214/- with current and future interest at the rate of 21% p.a. from the Defendants. The present suit was filed on 22.6.2018 and registered on 23.6.2018 before the Senior Civil Judge, Mysuru. Thereafter, the matter was transferred to the commercial Court.

8. It is pertinent to note that the Defendants on 8.3.2021 filed present application under Section 151 CPC seeking permission to file written statement on behalf of the Defendants. It is stated in the affidavit filed by the Defendant along with I.A. that he is a managing partner of the Defendant concern. Further it is stated that the Plaintiff has filed the suit for recovery of an amount of Rs.2,61,06,505/- and interest of Rs.64,86,214/- from the Defendants firm. Further it is stated that on 13.6.2019 only on perusal of objection filed by the Plaintiff in case No.186/2018 before the MSCFC, Bengaluru upon verifying the details and status of the case from the official website he learnt that the Defendant has been placed exparte and the matter was posted for evidence. Immediately he filed the application to set aside the exparte order as against the Defendant and permit the Defendant to contest the suit. Further it is stated that the alleged dispute in the present suit between the Plaintiff and the Defendant is a commercial dispute, the Plaintiff dispute the said fact filed the present suit as an ordinary suit and the same was numbered as O.S.No.501/2018. The Court allowed the application on 5.8.2019 and set aside the exparte order against the Defendant and further the Court held that the dispute the Plaintiff company and Defendant company is commercial dispute. In view of the amendment to the commercial Dispute Act, the suit has to be tried by the Special Court

established under the said Act. The said Court transferred the case to the commercial Court. Further it is stated that he has not received any notice, the advocate who had filed the Vakalath on behalf of the Defendant received the Court notice to appear in the present matter only during last week of January 2021. Further it is stated that in the affidavit that the Defendant after receiving the court notice appeared before the Court, the matter is still in the trial stage, and he has received notice only in the month of January 2021, the time period to file written statement has not elapsed. Further it is stated that if the application is allowed no hardship or loss would be caused to the other side. On the other hand, if it is not allowed it will cause great hardship and loss to the Defendant which cannot be compensated in terms of money and prayed to allow the application.

9. Per contra it is contended by the Defendant that the application filed by the Defendant is not maintainable either in law or on facts and liable to be dismissed. Further it is stated that the reasons mentioned in the affidavit accompanying the application are false and untenable. The reason also bald and cannot be accepted. Under these circumstances the application filed by the Defendant is wholly meritless and liable to be rejected as the Defendant has filed the written statement after lapse of 120 days. The Court has no discretion to accept the written statement in view of the decision reported 2019 SCC onlone 226 in case of

SCG contract India Pvt. Ltd. And KS Chamankar Infrastructure Pvt. Ltd and others and prayed to dismiss the application.

10. The learned counsel for the Defendants contended that the Plaintiff originally filed the suit before the Prl. Senior Civil Judge and CJM., Mysuru which was numbered as O.S.No.501/2018 and subsequently the said suit came to be transferred to the commercial Court after establishment of the commercial Court at Mysuru. Further it is contended by the learned counsel for the Defendants that the mandatory time line of 120 days to file written statement under the Commercial Courts Act is not applicable to the transfer case and prayed to allow the application. The learned counsel for the Defendants relied the decision reported in **AIR 2020 (15) SCC 585 in case of Ambalal Sarabai Enterprises Ltd. vs. K.S. Infra Space LLP and another** and also relied another decision reported in **2019 SCC Online Bom. 848** and also relied another decision of the Hon'ble Supreme Court of India in **Suo Motu Writ petition (civil) No.3 of 2020** in Re: cognizance for extension of limitation.

11. Per contra, the learned counsel for the Plaintiff contended that the suit summons were served on the Defendants wayback in the year 2019, the Defendants ought to have filed written statement within 120 days, he has not filed written statement within the statutory period, the

Defendant not entitled to file written statement after 120 days. The learned counsel for the Plaintiff relied the decision reported 2019 SCC Online 226 in case of SCG Contracts India Pvt. Ltd. vs. K.S.Chamankar Infrastructure Pvt. Ltd.

12. Now question arises whether the mandatory timeline of 120 days for filing a written statement in a Court commercial suit is applicable to suits which were filed prior to the enactment of the Commercial Court Act 2015 and which came to be transferred as commercial suits to be heard by the commercial division of this Court in accordance with the provision of Section 15 of the Commercial Courts Act ?

13. It is pertinent to note that the decision reported **2019 SCC online Bom. 12063** in case of **Raj Process Equipments and Systems Pvt. Ltd. & Ors. Vs. Honest Derivatives Pvt.Ltd.** Wherein the Hon'ble High Court of Bombay, (Aurangabad Bench) wherein it was held that the mandatory timelines of 120 days for filing written statement in a commercial suits is not applicable to the suits filed as ordinary suits and which are transferred from the commercial Courts. The said ratio was confirmed by the Hon'ble High Court of Bombay (DB) in commercial Appeal **No.543/2019** in case of **Reliance General Insurance Company Ltd. Vs. Colonial Life Insurance Company (Trinidad) Ltd. & Anr.** dated 28.1.2021. wherein the Hon'ble High Court of Bombay (DB) held that the learned

Single Judge has accordingly correctly interpreted the law and come to a correct conclusion that the mandatory timeline of 120 days for filing of a written statement in a commercial suit is not applicable to suits originally filed as ordinary suits, and which have been transferred as commercial suits to be heard by the commercial division of this Court, under Section 15(1) of the Commercial Courts Act.

14. The relevant para No.4, 5, 6 of the Judgment in commercial **Appeal No.543/2019 in case of Reliance General Insurance Company Ltd. Vs. Colonial Life Insurance Company (Trinidad) Ltd. & Anr.** dated 28.1.2021 reproduced as under:

4. The Commercial Courts Act provides for adjudication of what are called commercial disputes inter alia by establishment of Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions to deal with such suits. It makes various procedural provisions for dealing with such suits and appeals from such suits. It inter alia makes amendments to the provisions of the Code in their application to such commercial suits. We are concerned here with three such provisions of the Code, which have been amended as a result. These provisions are (i) Order V Rule 1, (ii) Order VIII Rule 1 and (iii) Order VIII Rule 10 of the Code. In Order V Rule 1, for the existing second proviso which applies

to all ordinary suits), the following proviso has been substituted for commercial suits :

“Provided further that where the defendant falls to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deem 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.”

On the other hand, in Order VIII Rule 1, the following proviso has been substituted in place of the original proviso :

“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.”

So also, in Order VIII Rule 10, the following proviso has been inserted;

“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.”

5. The Commercial Courts Act provides for transfer of pending suits in Chapter V of the Commercial Courts Act. Section 15, which is the only section forming part of Chapter V, is quoted below :

“Transfer of pending cases - (1) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in a High Court where a Commercial Division has been constituted, shall be transferred to the Commercial Division.

(2) All suits and applications, including applications under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of a Specified Value pending in any Civil Court in any district or area in respect of which a Commercial Court

has been constituted, shall be transferred to such Commercial Court;

Provided that no suit or application where the final judgment has been reserved by the Court prior to the constitution of the Commercial Division or the Commercial Court shall be transferred either under sub-section (1) or sub-section (2).

(3) Where any suit or application, including an application under the Arbitration and Conciliation Act, 1996 (26 of 1996), relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2), the provisions of this Act shall apply to those procedures that were not complete at the time of transfer.

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issued such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908);

Provided that the proviso to sub-rule (1) of rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and

the Court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5) In the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the Court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding."

6. As is apparent on the very face of it, Sub-section (4) of Section 15 makes a special provision for timeline of a transferred suit or application. The Commercial Courts Act contains strict timelines for various stages of a commercial suit. Though these timelines are applicable even to transferred commercial suits, at least to the extent of those proceedings which were not complete at the time of transfer of such suits, just as all provisions of the Commercial Courts Act are meant to apply to those proceedings (Sub-section (3) of Section 15), Sub-section (4) of Section 15 gives power or authority to the

Commercial Division or Court, as the case may be, to prescribe new timelines or issue further directions in such transferred suits. The proviso to Sub-section (4) makes the timeline provided in sub-rule (1) of Rule 1 of Order V of the Code for filing of a written statement inapplicable to a transferred commercial suit. As we have noted above, the amended proviso to sub-rule (1) of Rule 1 of Order V provides for initial period of 30 days after service of writ of summons for filing of a written statement, leaving discretion to the Court to extend that time, for reasons to be recorded in writing and on payment of such costs as it deems fit, upto a maximum period of 120 days from the date of service of writ of summons. The proviso goes on to add that on expiry of 120 days, the defendant shall forfeit the right to file a written statement. It further affirms the position in law by providing that no court shall thereafter allow the written statement to be taken on record. As is obvious, this entire proviso has been done away with by virtue of the proviso to Sub-section (4) of Section 15 of the Commercial Courts Act, which makes it clear that this particular proviso to Sub-rule (1) of Rule 1 of Order V does not apply to any suit or application which is transferred under Section 15 of the Commercial Courts Act to the Commercial Division of this Court.

15. Another decision in **C.O.No.1470/2020 in case of Sayan Sarker vs. Austin Distribution Private** dated

21.1.2021 wherein the Hon'ble High Court of Calcutta held that in case of transfer of a pending case to the Commercial Court after constitution of the Commercial Court, the proviso to Section 15(4) of the said Act would be applicable. The learned Judge failed to exercise his discretion by taking into account the proviso to section 15(4). In any event, the mandatory provisions for filing the written statement within 120 days did not apply in this case at the time of its institution and the learned Court had the discretion to accept the written statement. Further held that the commercial Court is directed to accept the written statement filed by the Defendant and proceed with the suit in accordance with law. It is pertinent to note that as per Judgment in **SUO MOTU writ petition No. 3/2020 in Re: cognizance for extension of Limitation** the Hon'ble Supreme Court of India as per Judgment dated 10.01.2022, extended period of Limitation from 15.03.2020 till 28.02.2022, and the Hon'ble High Court of Karnataka issued circular No.HCLC No. 59/2020 dated 19.01.2022 for exclusion of period from 15.03.2020 till 28.02.2022 in view of order passed in Hon'ble Supreme Court of India in SUO MOTU writ petition Civil No. 3/2020. Another decision reported in **(2022) 5 Supreme Court Cases 112 in case of Prakash Corporate vs. Dee Vee Projects Limited**. Wherein the Hon'ble Supreme Court of India held that extension of limitation period for all proceedings before the Courts and Tribunal due to COVID-19

pandemic held these principles are equally applicable to the commercial disputes as specified in the Commercial Court Act 2015.

16. A perusal of the above Judgments it reveals that the mandatory timeline of 120 days for filing of a written statement in a commercial suit is not applicable to suits originally filed as ordinary suits, and which have been transferred as commercial suits to be heard by the commercial Court, under Section 15(1) of the Commercial Courts Act.

17. On the case on hand, in view of the provision of the amended CPC and in view of the ratio laid down in the above referred Judgments, I am of the considered opinion that the application filed by the Defendant firm seeking permission to file the written statement deserves to be allowed and the delay can be compensated by imposing costs of Rs.5,000/-. Hence, I hold that the application filed by the Defendant firm under Section 151 of CPC seeking permission to file the written statement is deserves to be allowed subject to payment of cost of Rs.5,000/- . Hence, I answered **Point No.1 in the Affirmative.**

18. **Point No.2:-** In view of my findings on the above Point No.1, I proceed to pass the following:

ORDER

The application filed by the Defendant firm under Section 151 of CPC seeking permission to file written statement is allowed and the Defendant firm is permitted to file the written statement subject to payment of costs of Rs.5,000/-.

(Dictated to the Judgment Writer directly on computer and then pronounced in the open court on this the 16th day of July 2022)

(Hosamani Pundalik)
II Addl. District & Sessions Judge,
Mysuru

