


MHRG170001362024	<b>COMMERCIAL SUIT NO. 02/2024</b>
	<b>Tata Steel Limited</b> <b>Vs.</b> <b>I. K. Marine Agencies Pvt. Ltd. &amp; 1</b>
	<b>CNR NO. MHRG170001362024</b>

**COMMON ORDER BELOW EXH.22 AND 24**

1. By these applications, the plaintiff has prayed for taking off the written statement filed by the defendants after the expiry of period of 120 days from the date of service of the summons.
2. Learned advocate Mr. Atul Thakkar for the plaintiff has submitted that suit summons was duly served upon defendant No.1 on 03/08/2024 and that the defendant No.1 had appeared before the Court on 29/08/2024 and therefore according to Mr. Thakkar, defendant No.1 was expected to file the written statement within 30 days from the date of service summons i.e. up to 03/09/2024, however defendant No.1 did not file written statement. According to him, the period for filing the written statement could have been extended by 60 days upon showing sufficient reason by defendant No.1 to file written statement, but defendant No.1 did not show the cause and filed written statement on 16/12/2024 and thus according to Mr. Thakkar, since the written statement filed by defendant No.1 is not within period stipulated under the law, it is required to be taken off the record.

3. In support of the submissions, Mr. Thakkar has relied upon the judgment of Hon'ble Supreme Court in the case of **SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited and Ors., (2019) 12 Supreme Court Cases 210.**
4. Mr. Thakkar, the learned advocate for the plaintiff would further submit that summons was served upon defendant No.2 on 24/07/2024, but defendant No.2 has also not filed the written statement within stipulated time and thus he has submitted the application.
5. Learned advocate Mr. Vikas Somvanshi for defendant No.1 has submitted that defendant No.1 was never served with the summons and therefore the period for filing the written statement cannot be said to have started till the appearance of defendant No.1 before this Court. He would further submit that upon appearance of defendant No.1, he had applied for extension of time and accordingly my learned predecessor had extended time which presupposes that the period was extended for 120 days. Thus, he would submit that the written statement has been filed by defendant No.1 within statutory period and thus it is prayed for rejection of the application.
6. Learned advocate Mr. Machhindra Pawar for defendant No.2 has submitted that, although plaintiff has come with the contention that suit summons was served upon defendant No.2 on 24/07/2024, but according to him, if weight mentioned in the postal receipt is taken into

consideration, in that case it would reveal that it contained only 110 gm which presupposes that plaintiff did not send copies of the documents, on which reliance has been placed by it.

7. Advocate Mr. Pawar would further submit that in reply filed to the application, defendant No.2 has mentioned the cause for not filing written statement within the period of 120 days and therefore he would submit that the application deserves to be rejected.
8. In the light of the submissions advanced by both the sides, I have gone through the judgment of Hon'ble Supreme Court in the case of **SCG Contracts** (cited supra), wherein Hon'ble Supreme Court has mandated to file written statement within the period of 120 days from the date of service of the summons and if defendant fails to file the written statement within 120 days, on expiry of such 120 days shall forfeit the right to file written statement and Court must not allow written statement to be taken on record.
9. It is not in dispute that the suit is a Commercial Summary Suit and the Commercial Courts Act is applicable to the suit. That being the case, in accordance with Section 16 of the Commercial Courts Act, the amended proviso to Rule 1 of Order VIII of the Code, which clearly provides 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 and on payment of such costs as the Court deems fit but which shall not be later than 120 days from the date of service of summons and on the expiry of 120 days from the date of service of summons, the Defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record.

10. So far as, the contention raised by advocate Mr. Somvanshi for defendant No.1 in respect of non service of summons is concerned, it is true that the acknowledgment has not been placed with the record. However, learned advocate for plaintiff has placed on record the tracking report. Upon perusal of the same, it is revealed that the packet containing summons was purported to have been delivered on 03/08/2025. However, upon perusal of the copy of image of the tracking report it is found that on 03/08/2024, the concerned envelope was returned to the Junior Clerk from District and Sessions Court, Panvel. Therefore, it is not clear from the record that summons was in fact, served upon defendant No.1 on 03/08/2024.
11. So far as, defendant No.2 is concerned there is ample material on record to suggest that the same has been delivered to defendant No.2. An attempt has been made by learned advocate for defendant No.2 to state that plaintiff did not send copies of all the documents relied upon by it in the suit. However, on query, advocate Mr. Pawar has fairly submitted that, he did not raise issue in

respect of non supply of copies of documents relied upon by the plaintiff, before. Therefore, in my view at this stage it cannot lie in the mouth of defendant No.2 and raise the issue in respect of non receipt of the copies of all documents relied upon by the plaintiff.

12. Be that as it may, the record revealed that on 29/08/2024 both defendants have appeared before the Court and defendant No.2 had submitted an application for grant of time to file written statement vide Exh.15. Surprisingly, defendant No.1 did not apply for grant of time to file written statement.
13. At this juncture, advocate Mr. Somvanshi had submitted that since defendant No.1 did not receive copies of the plaint on that day no such application was submitted. It is strange to note that no such application was also submitted by defendant No.1 raising grievance about non receipt of the copies of plaint and other documents. Therefore, even if it is considered that there is no record before this Court in respect of date of service of summons and therefore even if it is assumed that defendant No.1 had got knowledge about pendency of the suit, in that case he was deemed to have been served with summons on 29/08/2024 and therefore he was supposed to file written statement at-least within 30 days from 29/08/2024, but he did not on 26/09/2024.
14. Defendant Nos.1 and 2 have submitted applications Exh.16 and 17 and sought time for filing written

statement and accordingly the applications were allowed and the matter was adjourned to 07/11/2024. In fact on 07/11/2024 by presuming that my learned predecessor had recorded reasons and extended the time to file written statement, it was expected from defendant Nos.1 and 2 to file written statement at-least on 07/11/2024, but they did not.

15. The record revealed that on 07/11/2024 the matter was adjourned to 30/11/2024 and thereafter to 16/12/2024. On 07/11/2024 and 30/11/2024 no application was submitted either by defendant No.1 or defendant No.2. No doubt, the Roznama dated 07/11/2024 and 30/11/2024 state that on that day the presiding officer was not present, however that does not relieve defendant Nos.1 and 2 from not filing written statement before the Court.
16. There cannot be dispute that whenever Presiding Officer of the Court is absent from the Court, the charge is always kept with other Court and therefore it was expected from defendant Nos.1 and 2 to file written statement on 07/11/2024 and thereafter 30/11/2024. The grounds raised by advocates for defendant Nos.1 and 2 that on 07/11/2024 and 30/11/2024, the Presiding Officer was absent from the duty and therefore, they did not file the written statement, cannot be accepted, because on 16/12/2024 the date on which defendant Nos.1 and 2 have filed their written statement Exh.18 and 19, also the Presiding Officer, was absent. Thus, when defendant Nos.1

and 2 have filed written statements on 16/12/2024, in absence of the Presiding Officer, then the question is arose as to what prevented them from filing same from on 07/11/2024 and 30/11/2024 a question has remained unanswered.

17. There cannot be second opinion that time for filing the written statement is available to the defendants for first 30 days and if defendant wants to get the time extended, it is necessary for them to show sufficient cause and the Court is expected to record reasons, it is on the part of Court for extending time beyond 30 days. However the record does not indicate that either defendant Nos.1 and 2 have shown cause for not filing the written statement within 120 days or my learned predecessor had extended the time by recording reasons.
18. Learned advocate Mr. Somvanshi and Mr. Pawar have submitted that defendants in their reply to the applications Exh.22 and 24 have quoted just and sufficient cause for not filing the written statement within statutory time. Once it has been held that the period of 120 days from the date of service of writ of summons is sacrosanct in the sense that this Court does not have power to extend the delay beyond 90 days from the service of summons and the Court cannot allow the written statement to be taken on record, then it is not necessary to consider any argument on sufficient cause or on any explanation proffered by the defendants explaining the reason for the

admitted delay beyond this period or on the bonafides of the defendants. Therefore, I do not find merit in the submissions advanced for defendants No.1 and 2.

19. Considering this aspect of the matter and law laid down by the Hon'ble Supreme Court in the case of **SCG Contracts (cited supra)** the written statement filed by defendant Nos.1 and 2 cannot be taken on record. Hence, I proceed to pass following order.

**ORDER**

1. Applications Exh.22 and 24 are hereby allowed.
2. Written statements Exh.18 and 19 filed by defendant Nos.1 and 2 respectively are ordered to be taken off the record.

Panvel,  
Dated :- 25/07/2025

(Dinesh E. Kothalikar)  
District Judge-2, Panvel,  
Dist-Raigad.