

IN THE COURT OF JUDGE, COMMERCIAL COURT (SENIOR CIVIL JUDGE  
CADRE), COIMBATORE

PRESENT: THIRU.C.B.VEDAGIRI, B.PHARM, MS-IT (AUS)., L.L.M., Judge  
Commercial Court, (Senior Civil Judge Cadre)  
Coimbatore

Dated this the 23<sup>rd</sup> Day of January 2026, Friday

*IA. No. 2 of 2025*

*in*

*C.OS No.13 of 2025*

*(CNR.No.TNCB23-000043-2025)*

1. Mr. Prince R Charles
2. Mr. P.Charles Rajan
3. Mrs. A.Mary Pushpalatha

... Petitioners/ Defendants

*//Vs//*

M/S.Canara Bank,  
Formally Syndicate Bank,  
Jothipuram Branch,  
Coimbatore.  
Rep by its Branch Manager

...Respondent/ Plaintiff

This Petition coming on this day for final hearing before me in the presence of Thiru.A.Manoharan, Advocate for the Petitioners/Defendants and Sri D.Senthilkumar, Advocate for the Respondent/Plaintiff. Upon hearing the counsels and on perusal of records, having stood over till this day for consideration, this Court passed the following:-

**ORDER**

The Petition has been filed by the Petitioner/Plaintiff under Sec 151 of Civil Procedure Code may be pleased to condone the delay and permit the petitioners to file the written statement, in the interest of justice and equity.

**1. The sum and substance of the Petition:**

The Petitioners/Defendants was the Deponent herein and the 3rd Defendant in the main suit O.S. No. 13 of 2024 on the file of this Honourable Court, and she was well acquainted with the facts and circumstances of the case. The Petitioners / Defendants was filing this affidavit on behalf of the 1st Petitioner, who is the 1<sup>st</sup> Defendant in the said suit. The Petitioners/Defendants submit that the 2<sup>nd</sup> Petitioner, who was also the 2<sup>nd</sup> Defendant in the suit, is her husband, and the 1<sup>st</sup> Petitioner was their son. The Petitioners/Defendants further submit that her husband, Mr. P. Charles Rajan, passed away on 28.05.2025 after a prolonged illness. Due to this bereavement and the attendant circumstances, they were unable to file the written statement within the period of 120 days prescribed under the provisions of the Commercial Courts Act from the date of receipt of the summons, i.e., 18.02.2025. The 1<sup>st</sup> Petitioner resides at Bangalore, and as his child is an infant, he was unable to travel. She was also unable to meet her counsel and take necessary steps owing to the said circumstances. Consequently, there has been a delay of 29 days in filing the written statement. It is pertinent to note that, she was not received the plaint copy and the documents from the plaintiff which was severed to her only on 31.07.2025 after the direction from this Honourable Court. The said delay is neither wilful nor wanton, but solely due to the reasons stated above. In the above facts and circumstances, the Petitioners / Defendants may be pleased the honorable court to condone the delay of 29 days in filing the written statement and permit the Petitioners/Defendants to file the same, and thus render justice.

**2.The crux of the Counter:**

The Respondent/Plaintiff submits that the petition is false, frivolous, vexatious and not maintainable both in law and on facts. The respondent emphatically denies each and every one of the allegations and averments contained in the petition as false and untenable and put the respondent to strict proof of every one of the same excepting those that were specifically admitted herein. The respondent submits that the main Plaint may be read as part and parcel of this petition. The respondent submits that the averment in para.3 was admitted by this plaintiff. The respondent further submits that the contentions raised by the Petitioners/Defendants in para 4 was to be proved by the petitioner and there is no nexus between the contentions raised and non-filing of the Written Statement by the Petitioners/Defendants as they have made their appearance before this Hon'ble Court on 20.02.2025 itself. The Petitioners/Defendants have not filed any medical records to prove that the 2<sup>nd</sup> Defendant was not well. The Commercial Courts Act, 2015 clearly enunciates that the Defendant shall not be allowed to file Written Statement later than One Hundred and Twenty Days from the date of service of summons and on expiry of One Hundred and 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. The other averment in para.4 of the petition to the effect that the 1<sup>st</sup> Petitioner is residing in Bangalore was untenable and it is for the Petitioners/Defendants to prove that this is the reason for non-filing of Written Statement. The very other averment in para.4 that the Respondent/Plaintiff did not serve the copy is not admitted by this Respondent/Plaintiff and the Petitioner is bound to prove the same. There are no merits in the present application and it shall be dismissed with costs.

3. Heard both sides. Perused the record.

#### **4. Point of determination:**

The point for consideration is that whether the present petition by the petitioners/ defendants to condone the delay and permit the petitioner to file the written statement is to be allowed or not?

5. The case of the Petitioners/defendants is that the respondent has filed the suit for recovery of money against them and that the 2<sup>nd</sup> and 1<sup>st</sup> Petitioner are her husband and son respectively. It is the contention of the 3<sup>rd</sup> defendant/petitioner that her husband, Mr. P. Charles Rajan has passed away on 28.05.2025 after a prolonged illness and that due to this bereavement and the attendant circumstances, they were unable to file the written statement within the period of 120 days prescribed under the provisions of the Commercial Courts Act from the date of receipt of the summons, i.e., 18.02.2025.

6. The petitioner counsel contended that the 1<sup>st</sup> Petitioner resides at Bangalore, and as his child is an infant, he was unable to travel and that she was unable to meet her counsel and take necessary steps which resulted in a delay of 29 days in filing the written statement.

7. The learned counsel for the petitioner urged that the petitioner has not received the plaint copy and the documents from the plaintiff and the same was severed to her only on 31.07.2025 after the direction from this Honourable Court. The delay of 29 days in filing the written statement is neither wilful nor wanton and prayed to allow the petition.

8. **Per contra**, the respondent / defendant counsel contended that the present petition is false, frivolous, vexatious and not maintainable both in law and on facts.

9. The respondent counsel urged that the contentions raised by the Petitioners/Defendants in para 4 had no nexus with the non-filing of the Written Statement by the Petitioners/Defendants as the petitioners/defendants have made their appearance before this Hon'ble Court on 20.02.2025 itself. The Petitioners/Defendants have not adduced any medical records to prove that the 2<sup>nd</sup>

Defendant was not well. It is also false to aver that the Respondent/Plaintiff did not serve the copy to the Petitioners/defendants.

10. The respondent counsel argued that the Act stipulates mandatory timeline and that the Defendant shall not be allowed to file Written Statement later than 120 days from the date of service of summons and on expiry of 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 and the present petition seeking leave permitting the petitioners to file written statement beyond the stipulated 120 days be dismissed with cost.

11. This court is conscious of the object and purpose of the Commercial Courts Act, 2015 which aims for speedy disposal of the suits and act in stipulated timelines, levying cost on parties if the same is not adhered to.

12. It is an admitted fact that the present petitioner has entered appearance on 20.02.2025 before this court. It is also an admitted fact that the 2<sup>nd</sup> defendant has died and that the respondent has also sought to exonerate the 2<sup>nd</sup> defendant from the suit.

It is the contention of the petitioner counsel that they were not served with the plaint documents except summon which goes to the very root of sufficient service. This court is also conscious of the fact that the delay cannot be condoned by this court. But it is from the record that the court summons were served to the defendants on 19.02.2025 and upon which the 2<sup>nd</sup> defendant has appeared before this court on 20.02.2025 and has represented the 1<sup>st</sup> and the 3<sup>rd</sup> defendant.

13. It is also from the record that the Advocate Mr.A.Manoharan has filed vakalat for defendants 1 to 3 on 20.03.2025 and the case was adjourned to 24.04.2025. On 24.04.2025, the defendants did not file their written statement and the case was again adjourned to 20.06.2025.

14. It is evident from the case records that in spite of various opportunities provided to the defendants to file the written statement, the defendants did not choose to do so and this court has ordered that the right to file the written statement by the 1 to 3

defendants were forfeited. It is on 20.06.2026, the defendant counsel has filed a memo stating that the 2<sup>nd</sup> defendant has died on 28.05.2025 and has later filed the present petition to condone the delay in filing the written statement.

15. This court refers to the decision of the Hon'ble Supreme Court in **Prakash Corporates Vs Dee Vee Projects Ltd 2023 1 CTC 365** wherein it was held that:

“13. The principal question calling for determination in this matter is as to whether the opportunity of filing written statement in the subject suit has rightly been declined or the appellant could be extended further relaxation in view of the orders passed and issued in the wake of COVID- 19 pandemic. However, before proceeding further, worthwhile it would be to take note of the relevant provisions of law, particularly those dealing with the right of filing written statement and default stipulations in that regard, as applicable to the subject suit.

13.1. The suit in question answers to the description of ‘Commercial dispute of a Specified Value’ and in its regard, the relevant applicable provisions of CPC are those as amended by the Schedule to the **Commercial Courts Act, 2015 read with Section 16 thereof. Section 12-A of the Act** has also come under reference in the orders passed in SMWP No. 3 of 2020. Thus, we may usefully reproduce **Section 12-A and Section 16 of the Act** as under: -

*“12-A. Pre-Institution Mediation and Settlement. – (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.*

*(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987), for the purposes of pre-institution mediation.”*

*“16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes. – (1) The provisions of the Code of Civil Procedure, 1908 (5 of*

*1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.*

*(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.*

*(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”*

13.2. By virtue of sub-clauses A, D(i) and D(iv) of Clause 4 of the Schedule to the Commercial Courts Act, 2015, respectively the provisions of CPC in Order V Rule 1(1), Order VIII Rule 1 and Order VIII Rule 10, concerning the time period within which written statement could be filed as also the consequences of default, stand amended in their application to the suit of present nature. While incorporating these amendments, the applicable provisions of CPC would read as under: -

Note: The provisos marked with **asterisk (\*)** are the amended provisions, as applicable to Commercial dispute of Specified Value i.e., the suit tried by a Commercial Court.

### **Order V Rule 1**

*“1. Summons. - (1) 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:*

*Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff’s claim:*

*\*Provided further 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.*

*(2) A defendant to whom a summons has been issued under sub-rule (1) may appear:-*

*(a) in person, or*

*(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or*

*(c) by a pleader accompanied by some person able to answer all such questions.*

*(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.” Order VIII Rule 1 “1. 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 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.”*

### **Order VIII Rule 1 and 10**

**“1. Written statement:** *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense:*

*\*Provided further 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.*

**10. Procedure when party fails to present written statement called for by Court.-**

*Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up. \*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.”*

16. For dealing with the rival submissions, in the first place, we need to take into account the time limits for filing written statement in a suit governed by the provisions of the Commercial Courts Act, 2015. As noticed, by virtue of Section 16 thereof, the Commercial Court is to follow the provisions of CPC as amended by the Act in the trial of a suit in respect to a Commercial dispute of a Specified Value. The relevant provisions contained in Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 CPC, have been reproduced hereinabove; and it is manifest that the said provisions not only envisage strict timelines for filing of written statement but even provide for consequences of default, while restricting the powers of the Court to extend the time for filing written statement beyond the period prescribed. Tersely put, as per the mandate of the said provisions: (a) the defendant is under an obligation to file the written statement of his defence within 30 days of service of summons; (b) if he fails to file the written statement within the said period of 30 days, he may be allowed to file the written statement on such other day as the Court may specify for reasons to be recorded in writing and on payment of such costs as the Court may impose but this other day, in any case, cannot go beyond 120 days from the date of service of summons; (c) on expiry of 120th day from the date of service of summons, the defendant forfeits the right to file the written statement and no Court can make an

order to extend such time beyond 120 days from the date of service of summons. These aspects were underscored by this Court in the case of *SCG Contracts (supra)* in no uncertain terms. In that case, the Single Judge of the High Court, after rejecting an application made by the defendant under Order VII Rule 11 CPC, proceeded to grant some time to the defendant for filing his written statement beyond the aforesaid mandatory period of 120 days. Later on, the plaintiff's prayer for not taking the written statement on record was rejected by the High Court on the ground that the earlier order permitting such filing of written statement had attained finality. This Court disapproved the orders so passed by the High Court with reference to the aforesaid amended provisions of Order V Rule 1(1), Order VIII Rule 1 and Order VIII Rule 10 CPC. While explaining the sweep and mandate of these provisions, this Court said, -

“8.....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 VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.”

This Court also made it clear that these mandatory provisions cannot be circumvented even by recourse to inherent powers under Section 151 CPC while observing as under: -

“16.....Clearly, the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and Rule 10 cannot be circumvented by recourse to the inherent power under section 151 to do the opposite of what is stated therein.”

17. If the aforesaid provisions and explained principles are literally and plainly applied to the facts of the present case, the 120 th day from the date of service of

summons came to an end with 06.05.2021 and the defendant, who had earlier been granted time for filing its written statement on payment of costs, forfeited such right with the end of 120 th day, i.e., 06.05.2021. However, it is required to be kept in view that the provisions aforesaid and their interpretation in *SCG Contracts (supra)* operate in normal and non-extraordinary circumstances with the usual functioning of Courts. It is also noteworthy that the above referred provisions of CPC are not the only provisions of law which lay down mandatory timelines for particular proceedings. The relevant principles, in their normal and ordinary operation, are that such statutory timelines are of mandatory character with little, or rather no, discretion with the Adjudicating Authority for enlargement. The question in the present case is, as to whether the said provisions and principles are required to be applied irrespective of the operation and effect of other orders passed/issued by the Courts under the force of aberrant, abnormal and extraordinary circumstances? In our view, the answer to this question cannot be in the affirmative for a variety of reasons, as indicated infra.”

16. This court place heavy reliance on the decision of the **Hon’ble Supreme Court** in **M/s Scg Contracts India Pvt. Ltd. vs Ks Chamankar Infrastructure Pvt. Ltd. AIR 2019 SC 2691** wherein it was held that:

“10) Several High Court judgments on the amended Order VIII Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. [**See Oku Tech Private Limited vs. Sangeet Agarwal & Ors. by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015** as followed by several other judgments including a judgment of the **Delhi High Court in Maja Cosmetics vs. Oasis Commercial Pvt. Ltd. 2018 SCC Online Del 6698**.

11) We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact

that the earlier law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.”

17. In view of the above discussion and the decision cited *supra*, this court is of the firm view that the Hon'ble Supreme Court has extended the time limit by specific orders in SMWP No.3 of 2020 only in the exigency of the COVID 19 pandemic and as such the the petitioner cannot take shelter on the attending circumstances as adumbrated in the petition, as in this very decision itself the Hon'ble Supreme Court has deprecated the practice in giving extended time in filing written statement in regular and normative conditions.

18. Hence, this court feels that the petitioner cannot file written statement after the 120 days from the date of service as evident from the case record and the contention of the petitioner that he shall be permitted to file the written statement after the expiry of 120 days of the service and that too after their right to file written statement has been forfeited by this court on 20.06.2025 cannot be entertained. **The petitioners/defendants are at liberty to cross examine the plaintiff restricted to the plaintiff's pleadings and evidence.**

***In the result, this petition is dismissed.***

The Order is directly typed in computer by Typist, corrected and pronounced by me in this Open Court on this 23<sup>rd</sup> Day of January, 2026.

Judge  
Commercial Court  
(Senior Civil Judge Cadre)  
Coimbatore

**List of Documents:-**

List of Documents the side of the Petitioners: Nil

List of Documents the side of the Respondents: Nil

Judge  
Commercial Court  
(Senior Civil Judge Cadre)  
Coimbatore

*Fair Order*  
*IA.No. 02 of 2025*  
*Cos No. 13 of 2025*  
*Date: 23.01.2026*