

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR**

**Present: Dr. J. JULIET PUSHPA, Ph.D.(Law)**

Principal District Judge, Tiruvallur

**Friday, the 27<sup>th</sup> day of March, 2026**

**I.A.4/2026 IN COS NO.152/2024**

**(CNR No. TNTR010021902023)**

M/s YNB Catering Services India Private Limited  
Represented by its Manager Kalaiselvi

....Petitioner/ DDefendant

/Vs/

M/s Mobase Electronics India Private Limited  
Represented by its Authorized Signatory

...Respondent / plaintiff

This petition coming on 12.03.2026 before me for final hearing in the presence of M/s M. Arumugham, D. Sasikala, R.S. Vijayarangam, M. Krishnamurthy, Learned Counsel for the Petitioner/defendants and M/s D. Hymavathy, A. Thanasekar, D.Udhayakumar, learned counsel for the respondent /plaintiff and upon hearing both side , perusing the materials on records and having stood over for consideration till this date, this Court delivered the following:-

**ORDER**

This petition is filed by the Petitioner/ defendant Under Order IX Rule 7 of CPC to set aside the exparte order dated 06.08.2025 passed as against the petitioner/defendant in Commercial OS No.152/2024 .

**2. The averments in the petition in brief :**

According to the petitioner/defendant, the respondent filed the commercial Original Suit for evicting the defendant from the suit property and

for damages. The petitioner not received any summons on the date of hearing, hence, he could not appear before this Court. Thereafter, he came to know about the paper publication requiring the presence on 25.08.2025 through his friend. Since the defendant was travelling throughout Tamilnadu , he could not come to know about the said paper publication in time and about the exparte order dt. 06.08.2025. Hence, the petitioner/defendant was unable to participate in the suit proceedings and instruct the counsel due to the unforeseen circumstances, which resulted in the exparte order on 06.08.2025 The petitioner has valid defence in the suit. If the exparte order dated 06.08.2025 is not set aside, the petitioner will be put to great hardship and irreparable loss. Hence, prayed to set aside the exparte order dated 06.08.2025.

**3. The averments in the counter filed by the respondent in brief :**

The respondent / plaintiff resisted the petition by contending that inspite of the notices and reminders sent to the petitioner/defendant, they have failed to vacate the property of the respondent within 3 months , instead they filed a vexatious suit in OS No.102/2022which is also pending with the intention to evade the payment of rent, property tax and electricity bills on the rented property as agreed in their rental agreement and is pending. Even though court notices, private notes and multiple paper publications were given, the petitioner intentionally dragging on the suit from the commencement wasting the precious time of the Court which is unjust. The petitioner evaded to receive the notices at the security gate of the property and they have locked the property and keeping the keys with themselves. Since the limitation period of 90 days is

already expired as per the Commercial Courts Act 2015, with the permissive 30 days also expired, they have lost and forfeited the right to file written statement as per the Act. The respondent does not have any objection to set aside the ex parte order against the petitioner as allowing the petition will only help and support the submissions made by the plaintiff. Hence, prayed to mark and allow the set aside petition with costs.

4. No oral or documentary evidence is adduced by the petitioner.
5. Now, the point for consideration is
  1. **Whether the petitioner has made out grounds to set aside the ex parte orders against them ?**
  2. **Whether these petitions are to be allowed ?**

6. **POINTS:**

Heard both side. records perused.

This petition is filed by the petitioner/ defendant to set aside the ex parte order dated 06.08.2025 as against the defendant in the Commercial Original suit.

7. The petitioner herein is the defendant in the Original Suit which was filed by the respondent / plaintiff as against petitioner herein for eviction of the defendant from the suit property and for damage towards illegal occupation. The petitioner/defendant was served notice and they did not enter their appearance, the defendant was set ex parte on 06.08.2025 and now posted for ex parte evidence.

8. It is contention of the petitioner /defendant that he is travelling all over the State for business transactions and he could not come to know about the summons and hence, he could not receive the summons and engage counsel to file the written statement and it is necessary to set aside the *exparte* orders dated 06.08.2025.

9. Admittedly, this suit was originally taken on file as Commercial Original Suit under Commercial Courts Act, 2015. Under the Commercial Courts Act, the limitation for filing a written statement in commercial suits is 120 days from the date of service of summons, with no further extension or condonation of delay permitted beyond this period. Admittedly, as on 05.03.2025, the private notice was served upon the defendant and substituted service was effected on 16.07.2025 and on 06.08.2025, the defendant was called absent, set *exparte*. Since the private notice was served as on 05.03.2025, the period of limitation for filing written statement by the defendant has expired, i.e. beyond 120 days. Therefore, now the issue to be discussed is whether the defendants can file written statement even after the expiry of 120 days as prescribed under Order 8 Rule 1 of C.P.C. by condoning the delay.

10. The Commercial Courts Act aims to expedite the resolution of commercial disputes by prescribing a stringent timeline for filing written statements, limiting it to 120 days from the date of service of summons. While the normal period for filing a written statement in answer to the commercial suit would expire 30 days from the date of service of summons, the court may extend this period by an additional 90 days, making the total permissible period

of 120 days from the date of service of summons. Beyond this statutory period of 120 days, the defendant's right to file the written statement is forfeited, and no further extension or condonation of delay is permitted. Thus in Commercial suit the defendant shall forfeit the right to file the written statement beyond 120 days from the date of service.

11. Admittedly, the time limit for 90 days and extended period of time for 30 days is mandatory and not directory. Therefore, the written statement is to be filed within 30 days of extended period and overall in 120 days from the date of service of summons. Since the petitioner / defendant was evading to receive the summons, private notice was permitted and acknowledgement received with service made as on 05.03.2026 and thereafter, substituted service by paper publication was effected as on 20.07.2025. Subsequently, defendant was set *ex parte* on 06.08.2025 . This petition was filed originally on 08.10.2025, by which time, already 120 days was expired for the filing written statement of defendant. Thus, the defendant's right to file the written statement is forfeited. In commercial suits, the Court has no further power to extend the time beyond the prescribed period and to condone the delay.

12. Further, on perusal of records shows that the petitioner filed this petition on 08.10.2025. The learned counsel for the petitioner contends that even assuming that the suit is commercial suit as per *Provisio* Rule 1 of Order VIII of CPC, in relation to Commercial Courts Act, the defendants cannot be set *ex parte* for non-filing of written statement and the defendants only forfeit their right to file written statement. On considering this contention, the position of

law thus now has been settled that given the consequences of non-filing of written statement , it was held to be mandatory which cannot be circumvented even by recourse to inherent powers u/s 151 of C.P.C. as held by the Hon'ble Supreme Court as per the authority reported in **2019 (12) SCC 210** (SCG *Contract (india ) Pvt. Ltd Vs. K.S. Chamankar Infrastructure Private Limited*), wherein the Hon'ble Apex Court held that

*“A perusal of the amendments made in the wake of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 to Code of Civil Procedure-Or. VIII, r. 1 and 10 proviso, Or. V, r. 1 sub rule (1) second proviso, 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. 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. Given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. 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”*

Further, the Hon'ble High Court, Madras in the matter of *Maria Albert Stanly -vs- Diamond Hospital Equipments* (Order dated 06.01.2023 in A. No. 3751 of 2022 in C.S. No. 14 of 2022), observed as follows :

***“19. Under Order VIII Rule 1 of C.P.C. as amended for the purpose of Commercial Dispute Act, 2015, a Defendant is ordinarily required to file a Written Statement within a period of 30 days of receipt of summons.***

***20. This period can be extended by another period of 90 days alone. However, the cumulative period cannot exceed more than 120 days from the date of service of summons”***

13. As on the date of filing of this petition, already 120 days has been expired from the date of receipt of the summons / date of publication to the for the petitioner/defendant. All the opportunities were exhausted . Therefore, in view of the above discussion, this Court holds that the Proviso to Order VIII Rule 1 of Code of Civil Procedure, which fixes the maximum period for filing the Written Statement as 120 days and which was held by the Hon’ble Apex Court in the above authority, beyond which the right to file the Written Statement will stand forfeited.

14. Therefore, in view of the above authority , this Court cannot go beyond the prescribed time limit of filing the written statement and permit the petitioner/defendant to file the written statement as the right to file the written statement of the defendant stand forfeited after the expiry of 120 days. Here, the petitioners / defendant has sought to set aside the exparte order as against them on 06.08.2025. The petitioner states that they could not follow up the matter with their counsel since he was outstation for his business travel, and could not come to know about the status of the proceeding and also about filing written statement, he they did not appear before the Court.

15. Though the petitioner company was set *ex parte* this commercial suit, they can participate in the proceedings, but their participation is limited. While they cannot present evidence in their defense, they are generally allowed to cross-examine the plaintiff's witnesses with limited scope. They can also apply to set aside the *ex-parte* order by showing sufficient cause for their absence as held by the Hon'ble High Court, Madras reported in **2014(3) CTC 757 (S. Kamalam Vs. Rajamani)**, that

*“no petition under Order IX Rule 7 CPC is necessary for a defendant to take part in the proceedings from the date of his appearance, if he does not seek restoration of the status quo ante placing him in the position as if he had appeared on the earlier date on which he failed to appear pursuant to which the order for hearing the suit ex-parte came to be passed. If the defendant had not filed the written statement, he may appear in the ex-parte trial and even cross-examine the witnesses to be examined on the side of the plaintiff on the averments made in the plaint, but shall not be permitted to project a plea of defence, which ought to have been taken in the written statement. Having not filed any plea of defence, he shall be disabled from examining the witnesses on his side. On the other hand, if he had already filed a written statement raising his plea of defence and on a subsequent date of hearing, he fails to appear resulting in an order passed under Order IX Rule 6(a) CPC to the effect that the suit will be heard ex-parte, then such a defendant cannot be prevented from taking part in the proceedings from the subsequent date of hearing on which he may chose to appear. In such cases, if the recording of evidence had not begun, then he shall be in a position to fully participate in the proceedings. If at all the witnesses have been examined and documents have been marked without an order under Order IX Rule 7 CPC, he cannot get the recording of depositions and the marking of documents in his absence nullified and in such cases he can take part in the proceedings from the time he chooses to appear without seeking restoration of the status quo ante.”*

16. By setting aside the *ex parte* order no prejudice would be caused to the respondent as the petitioner has forfeited their rights to file written statement under Proviso to Order VIII Rule 1 of Code of Civil Procedure and the matter will be decided on merits which is beneficial to both the parties

rather than deciding the case on ex parte. Even the respondent has stated that he has no objection to allow this petition as this will only help and support the submissions made by the plaintiff. Thus, there is no impediment in allowing this petition.

17. Therefore, considering the above position of Law and also in order to give an opportunity to the petitioners to take part in the proceedings to the limited extent of only cross examining the plaintiff side evidence , but without plea of defence, but only with respect to the case of the plaintiffs and averments in the plaint. Thus, to that effect, this petition is allowed.

**In the result, this petition is allowed with the condition that the petitioner /defendant to forfeit their right to file written statement and plea of defence and with the permission to take part in the proceedings of the suit with limited scope. No costs.**

Dictated to Steno-typist, taken down, transcribed and typed by him, corrected and pronounced by me in Open Court, this the 27<sup>th</sup> day of March, 2026

**PRINCIPAL DISTRICT JUDGE,  
TIRUVALLUR**

Petitioner and respondent side witnesses and Exhibits : NIL

**PRINCIPAL DISTRICT JUDGE,  
TIRUVALLUR**