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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMON ORDER IN SERIAL NOS. 901 TO 1013
ON THE SUPPLEMENTARY BOARD**

DATED 9TH JULY 2021

**CORAM: G.S. PATEL, J
(Through Video Conferencing)**

DATED: 9th July 2021

PC:-

1. Heard through video conferencing.
2. I have today had listed from serial Nos. 901 to 1013 on the Supplementary List commercial suits. All are of the value of more than Rs 100 crores. This is a sub-class or sub-category of commercial cases, and all cases in this sub-category stand assigned to this Court. All these matters are governed and regulated by the Commercial Courts Act, 2015 (“CCA”) and the amendments effected by that Act to the Code of Civil Procedure, 1908 (“CPC”).
3. I propose today to issue directions to give the parties a further opportunity to complete all compliances. Not all these directions will apply to every case. From Monday, 12th July 2021, I propose to

list these cases individually in smaller batches to monitor further progress towards trial of the Suit.

4. In almost every single one of these cases there are pending interim applications (in some cases more than one). The pendency of these interim applications does not mean that the requirements of the CCA, the CPC or the Bombay High Court (Original Side) Rules (“**the Rules**”) in regard to service, filing of written statement etc. should not be implemented.

5. For convenience, I have attempted to categorize the various directions.

A MATTERS STILL ON LODGING NUMBERS

(A.1 In all suits still on a lodging number, irrespective of the date of institution of the suit, office objections are to be removed and all filing defects cured by 30th July 2021.

(A.2 If this is not done by that date, the suit will be listed before this Court on the next available date for directions.

(A.3 Parties and Advocates are put to notice that if there is non-compliance with these requirements, I will consider dismissing the suit forthwith. If good cause is shown, I may consider granting a short extension, but this will be on terms.

B SUITS WHERE SERVICE OF WRIT OF SUMMONS IS NOT COMPLETE

(B.1 In all cases where writ of summons has not been served on all parties (as per the requirements of the CCA read with the Rules and the CPC), service is to be effected on those not served no later than by 6th August 2021.

(B.2 Because these are commercial suits, where expeditious and quick disposal is the requirement of the statute, service is permitted directly by the Advocates for the Plaintiff(s) by reputed courier with proof of delivery. In addition, service by email is also permitted.

(B.3 Where Advocates have entered appearance for one or more of the defendants, and have consented to waive service of the writ of summons *in a registered plaint* the requirement of service is dispensed with.

(B.4 In all cases the writ of summons is to be accompanied by a true copy of the plaint. The Advocates for the Plaintiff must ensure to lodge in the Registry sufficient copies of the plaint.

C SUITS WHERE SERVICE OF THE WRIT OF SUMMONS IS COMPLETE BUT WRITTEN STATEMENT(S) ARE NOT FILED

(C.1 In all cases where the service of the writ of summons is wholly or partially complete, (i.e. some or all of the defendants are served), but where written statements

have not been filed by the served defendants, or where the defendants are deemed to be served on account of the Advocate having entered appearance and having expressly consented to waive service of the writ of summons in a registered plaint written statements are to be filed within 30 days from today.

(C.2 This is subject to the statutory restriction that no written statement is to be accepted if 120 days have passed since the date of service of the writ of summons. This direction follows the decision of this Court (the Hon'ble Mr Justice SJ Kathawalla) in *Axis Bank Ltd v Mira Gehani & Ors.*¹ This has to be read with the decision of the Supreme Court in *SCG Contracts (India) Pvt Ltd v KS Chamankar Infrastructure Pvt Ltd*,² that is to say, where there is an application by the defendant under Order VII Rule 11, that time may be extended by the Court. Any such case where there is a pending order VII Rule 11 application will be separately listed for directions. Subject to this, where written statements have not been filed within the statutory period, the suits will be listed for directions.

(C.3 Where the period of 30 days from the date of service of the writ of summons has expired but no written statement has filed, I will consider granting an extension (not exceeding the statutory limit, and

1(2019) SCC OnLine Bom 358.

2(2019) 12 SCC 210.

subject to the law settled by the judgments noted above).

(C.4 However, parties and Advocates are put to notice that any such extension will, of course, be of not more than two weeks in the first instance and will be subject to an order of costs. Every extension up to the prescribed time limit will be considered on merits and only if good cause is shown. It will also be subject to an escalating order of costs.

(C.5 In the current pandemic and lockdown period, the Supreme Court has ordered the suspension of limitation periods. This will be taken into account while granting extensions of time for filing written statements. However, the order of suspension does not dispense with the requirement of timely completion of filings, nor the power to order costs, but only that the statutory bar on receiving written statements after 120 days will presently not operate. Parties and advocates will bear this in mind. Thus, if the written statement is beyond the statutory period or the time given in these directions, whichever is earlier, the Registry is neither to reject nor accept the written statement but is to simply place the matter before the Court for directions.

D SUITS IN WHICH THE WRIT OF SUMMONS IS SERVED AND WRITTEN STATEMENTS HAVE BEEN FILED.

(D.1 These suits will be separately identified and will be listed on the next available date for framing issues and further directions including scheduling the first Case Management Hearing as required by Order XV-A of the amended Code of Civil Procedure, 1908.

E COMMERCIAL SUMMARY SUITS:

(E.1 Where the filing is of commercial summary suit of more than Rs 100 crores, the appropriate writ of summons will be issued.

(E.2 The summons for judgment will then be listed (subject to removal of office objections) on the next available date.

F FRESH SUITS:

(F.1 As regards fresh commercial suits of the value of Rs. 100 crores and above, these will follow the statutory norms. In all such cases:

- (a) office objections are to be removed within two weeks of the date of institution of the suit;
- (b) writ of summons is to be issued and served within three weeks of the final numbering of the suit. Service by courier is permitted with proof of delivery;
- (c) written statements are to be filed within 30 days of service of the writ of summons or within 30

days of an Advocate entering appearance for the defendant, whichever is earlier;

- (d) In all fresh suits, soft copies of the plaint, interim application(s) and annexures will be required.

G NEW FILING NORMS TO BE FOLLOWED

(G.1 All fresh filings after today in this sub-category of commercial cases will conform to the Full Court decision of 16th June 2021 regarding filings, i.e. that all filings will be ONLY on good quality A4-sized white paper of at least 75 GSM with an inner margin of 5 cm, an outer margin of 3 cm, in Times New Roman or Georgia font with a font-size of 14 point throughout.

(G.2 The registry is not to accept any non-conforming filing.

(G.3 This applies to consent terms and minutes of the order, written submissions or notes of authorities when permitted and all compilations whether of authorities or those said (or alleged) to be 'for convenience'.

H PENDING INTERIM APPLICATION(S) ON LODGING NUMBERS:

(H.1 All pending interim applications or notices of motion that are still on lodging number will be got finally numbered by 30th July 2021.

6. The Registry is requested to segregate the pending commercial suits of the value of Rs. 100 crores and above and to

start listing them for directions in accordance with this order from 26th July 2021.

7. These directions are subject to periodic revision, as necessary.

8. The matter at Serial No. 914 (*Commercial Suit No. 85 of 2015: National Spot Exchange Ltd v Tavishi Enterprises Pvt Ltd & Ors*) is incorrectly listed on board. It has already been disposed of by an order dated 1st November 2018. This is noted. The Registry will update the case status.

9. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)

Note: This order is modified as per order dated 5th August 2021 passed suo motu for Speaking to the Minutes.

This order is further modified as per order dated 18th August 2021 passed suo motu for Speaking to the Minutes.