



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 13 -11-2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CS No. 347 of 2017

1. M/s.Prasad Productions Pvt.Ltd
Rep.by Auth.Sign. No.28, Arunachalam
Road, Saligramam, Chennai-93

Plaintiff(s)

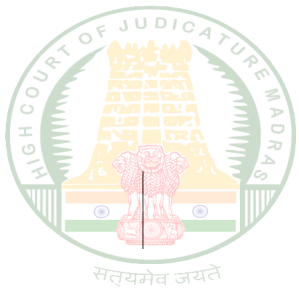
Vs

1. Prakash Raj
Propr. M/s.Prakash Raj Productions,
No.21/9, Balaraman Road, Adyar,
Chennai-20

Defendant(s)

PRAYER

a) A sum of Rs. 1,58,89,109/- together with interest at 24% per annum on Rs.75,00,000/- from date of plaint till date of decree b) for the costs of this suit c)for such further or other reliefs as this court may deem fit and proper in the circumstances of this case and thus render justice.



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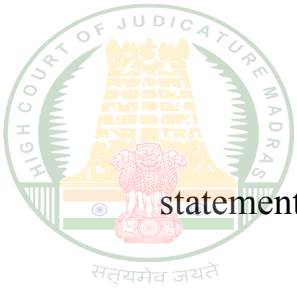
For Plaintiff(s): M/s.T.Poornam

For Defendant(s): M/s.A.Chidambaram

ORDER

This order may be read in conjunction with and in continuation of the earlier order dated 25.09.2024 passed in A. Nos.1195 & 1196 of 2024 in C.S. No.347 of 2017. The facts of the case have already been detailed by this court in its order dated 25.09.2024.

2. The learned counsel appearing for the plaintiff submitted that as it is an under chapter suit, there could be a summary proceedings and such factors are decided by this court as stated in the order dated 25.09.2024. After inception of the Commercial Courts Act, the only point that arises for consideration is, whether the defendant has filed the written statement within a period of 120 days (30 days and thereafter, with a grace period of 90 days) from the date of service of summons on the defendant. The limitation commences from the date of service of summons to the defendant and if no written statement is filed on the last date i.e. on completion of 120 days, then the right of filing written



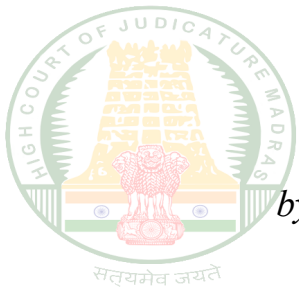
statement by the defendant is forfeited.

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3. Mr.A.Chidambaram, the learned counsel appearing for the defendant vehemently contended that, as the suit was filed as an under chapter suit, only the Code of Civil Procedure is applicable and the Commercial Courts Act is not applicable to the present case. On a specific question to the learned counsel for the defendant that on what date the summons was served on the defendant, the learned counsel submitted that the summons was served on 18.07.2017 and pointed out that in the order passed by this Hon'ble Court on 05.02.2025, this court permitted the defendant to defend the suit by filing written statement. The said order is extracted hereunder:

"Pursuant to order dated 25.09.2024 in A. Nos.1195 & 1196 of 2024, the defendant has deposited a sum of Rs.1 Crore to the credit of the suit. After taking into account the amount deposited earlier, an aggregate sum of Rs.1.5 Crore is available by way of deposit. Thus, the conditions imposed in order dated 25.09.2024 have been complied with.

2. Therefore, the defendant is permitted to defend the suit



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by filing the written statement. such written statement shall be filed on or before 05.03.2025. List the matter on 05.03.2025.

Meanwhile, the parties are directed to explore the possibility of amicable resolution of the dispute."

4. The plaintiff has filed a payment out application in A. No.831 of 2025 for payment of a sum of Rs.1.5 Crores subsequent to the acceptance of Bank Guarantee and the same was allowed. Despite direction to the parties to explore the possibility of an amicable resolution of the dispute, by order dated 23.04.2025, this court has recorded that the parties have expressed that settlement could not be reached between them and directed them to submit draft issues.

5. With regard to filing of the written statement, the Registry has put up a note on 19.08.2025 that the written statement filed by the sole defendant vide Diary No.9006 of 2005, was returned on 07.03.2025, and the same was not re-presented till 19.08.2025 and it was further noted by the Registry that even till

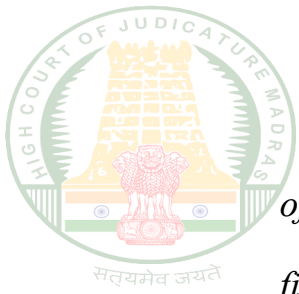


11.09.2025, the written statement, which was returned, was not re-presented.

Though the learned counsel appearing for the defendant contended that the written statement was filed within time, it was disputed by the plaintiff. The learned counsel for the defendant was directed to file a Memo with regard to the date on which the written statement has been filed and that the said Memo shall be filed on or before 06.10.2025 and it was further directed to list the matter on 06.10.2025. The said order was passed on 22.09.2025.

6. On 03.10.2025, the Registry has put up another note that the written statement in D. No.9006/2025 which was returned on 07.03.2025, was not re-presented till 03.10.2025 and the same continued till 10.10.2025 and a Memo was filed by the plaintiff, which was taken on file as S.R. No.39106/2025. In the said Memo filed by the plaintiff in paragraph 5, it is stated as follows:

"5. It is submitted that under Order V Rule 1 of the CPC, as amended by Section 16 of the Commercial Courts Act, 2016, the Written Statement is required to be filed within 30 days from the date of receipt of summons but under the second proviso to Order V Rule 1 of the CPC, this Hon'ble Court, for reasons to be recorded in writing and on payment



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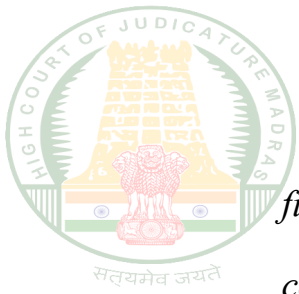


of such costs as the Courts deems fit, may extend the time for filing the written statement by a further period of not more than 90 days. If the written statement is therefore not filed within the said period of 120 days, the defendant shall forfeit the right to file the written statement. In the instant case, the plaintiff is unaware as to whether the defendant has re-presented the written statement or not. Even as on 06.10.2025, the last date of hearing of the suit, 214 days have expired since the presentation of the written statement on 05.03.2025."

7. In this regard, it is appropriate to consider the judgment of the Hon'ble Supreme Court in ***SCG Contracts (India) Private Limited vs. K.S.Chamankar Infrastructure Private Limited and others*** reported in ***(2019) 12 SCC 210***, wherein the Hon'ble Supreme Court, in paragraph 8, held as under:

"8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to



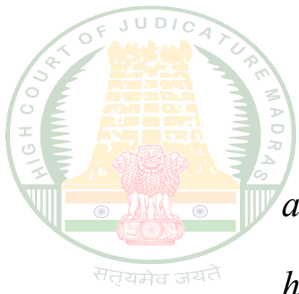
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file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred 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."

Equally, in Order 8 Rule 1, a new proviso was substituted as follows: "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 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.

"This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under: "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,



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as the case may be, the court shall pronounce the 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 further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

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 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days."

8. It is also useful to rely upon the judgment of the Division Bench of this



court in **Kovilpatti Lakshmi Roller Flour Mills Limited (KLRFM) vs. Cape Flour Mills Private Limited (CAPE) & Ors dated 12.12.2022 in CS (Com Div)**

19 and 48 of 2022, wherein a reference was answered in affirmative that the outer time limit of 120 days for filing of written statement by a defendant in a suit arising out of commercial dispute would also apply to filing of a written statement by a plaintiff in response to a counter-claim made by a defendant in such suit.

9. As the Hon'ble Supreme Court has held in **SCG Contracts's case** that if the written statement is not filed within a period of 120 days as contemplated under the Commercial Courts Act, then the defendant has forfeited his right of filing the written statement. As the defendant has not filed the written statement within the period of 120 days i.e. from the date of service of summons on 18.05.2017, the written statement filed by the defendant cannot be taken on record, as per the dictum of the Hon'ble Supreme Court in **SCG Contracts (India) Private Limited vs. K.S.Chamankar Infrastructure Private Limited and others** reported in **(2019) 12 SCC 210**. Therefore, since the defendant's right has been forfeited, the defendant cannot be permitted to re-present the



written statement.

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10. As the suit is of the year 2017, the matter may be listed before the learned Additional Master II for commencement of trial on 2/12/2025.

13.11.2025

Asr

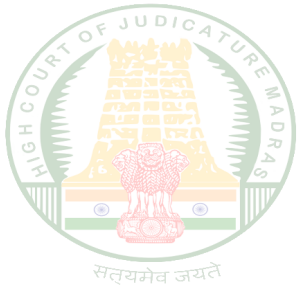
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

N.SENTHILKUMAR J.



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