

TIME LIMIT FOR FILING WRITTEN STATEMENT: MANDATORY OR DIRECTORY

INTRODUCTION:

The Hon'ble Supreme Court of India ("Apex Court"), in a recent case titled as *M/s SCG Contracts India Pvt. Ltd. vs. M/s KS Chamankar Infrastructure Pvt. Ltd.*, [C.A. No. 1638/2019] has held that it is mandatory to file the written statement in a commercial suit within 120 days from the date of service of summons upon the Defendant(s) and if the Defendant fails to do so, the right to file the same is forfeited, which cannot be saved or extended even by invoking Section 151 of the Code of Civil Procedure ("Code"). The present article, shall briefly discuss the effect and impact of the above decision.

A. BRIEF FACTS OF THE CASE:

The brief facts leading to the filing of the appeal before the Apex Court are that M/s SC Contracts India Pvt. Ltd. ("Appellant") filed a suit against M/s K.S. Chamankar Infrastructure Pvt. Ltd. ("Respondent") before the Hon'ble High Court of Delhi and claimed a sum of approx. Rs. 6,94,63,114/-. Since the subject matter of the suit was a commercial dispute as defined under Section 2(c) of Commercial Courts Act, 2015, therefore, the suit was filed before the Commercial Division of Delhi High Court. Respondent received the summons of the aforesaid suit on 14.07.2017. Therefore, as per the proviso to Order V Rule 1 and the proviso of Order VIII Rule 1 of Code of Civil Procedure, 1908 ("Code"), the Respondent was obliged to file its written statement maximum within 120 days to be calculated from 14.07.2017, which expired on 11.11.2017.

The Respondent did not file its written statement till 11.11.2017, and instead filed an application under Order VII Rule 11 seeking rejection of the suit. The High Court rejected the application vide its order dated 05.12.2017, though granted the Respondent time till 15.12.2017 for filing the written statement subject to cost of Rs. 25,000/-.

The Respondent filed the written statement on 15.12.2017, however, on 06.08.2018, an objection was raised that the amendments made to the Code, resulted from the enactment of Commercial Courts Act, 2015 on 23.12.2015,



Abhishek Kumar
Associate Partner
E: abhishek@singhania.in



Siddharth Pandey
Associate
E: siddharth@singhania.in

were not adhered to, and therefore, the written statement could not be taken on record. The High Court, vide its order 24.09.2018, however, held that order dated 05.12.2017 being final, the written statement should be taken on record. Aggrieved by the aforesaid two orders dated 05.12.2017 and 24.09.2018, the Appellant filed the appeal before the Hon'ble Apex Court.

B. ISSUE BEFORE THE SUPREME COURT:

The issue before the Hon'ble Apex Court was whether the written statement could be directed to be taken on record, even though the time limit of 120 days had elapsed from the date of service of summons upon the Defendant(s).

C. ARGUMENTS ON BEHALF OF APPELLANT:

The Appellant argued that the amendments made to the Code in 2015 after the enactment of Commercial Courts Act, 2015, providing the time limit of 120 days to file the written statement from the date of service of summons in a suit, is mandatory rather than being directory. Therefore, failure of the Defendant(s) to do so resulted in forfeiture of its right to file the written statement and hence, the High Court could neither have extended the time nor could have directed to take the written statement on record.

D. ARGUMENTS ON BEHALF OF RESPONDENT:

The Respondent, *inter alia*, contended that since an application under Order VII Rule 11 filed by it was pending, therefore, until the aforesaid application was decided, the proceedings could not have continued further. The Respondent further contended that the written statement could not be filed due to the pendency of the aforesaid application and hence, there was no infirmity with High Court's order dated 05.12.2017 allowing the defendant to file written statement despite lapse of 120 days. The Respondent argued that the time limit of 120 days was merely directory in nature.

E. APPLICABLE STATUTORY PROVISIONS:

The Commercial Courts Act, 2015 came into force on 23.10.2015, and with it came certain amendments in the Code also, so as to achieve the objective of expeditious disposal of commercial disputes. In sub-rule (1) of Order V Rule 1 of the Code, the following proviso was substituted for the second proviso:

"... 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 days, 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..."

Similarly, a new proviso was also substituted in Order VIII Rule 1, which reads 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...*”

The legislature, while re-emphasizing on the aforesaid two amendments, also amended Order VIII Rule 10, by inserting another proviso which reads as follows:

“... *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...*”

F. JUDGMENT OF THE COURT:

The Apex Court in order to arrive at a conclusion has duly considered the intention of the legislature and the language used in the abovementioned provisions. The Apex Court has adopted the literal interpretation of the above-mentioned three provisions, wherein a mandatory time limit of 120 days i.e. a period of 30 days from the date of service of summons upon the Defendant and a further grace period of 90 days is provided to file the written statement, subject to costs, which may be imposed by the concerned court. The above provisions further provide that, in an event where defendant fails to file the written statement within the aforesaid period of 120 days, the right of defendant shall stand forfeited. The amendment introduced in the form of proviso to Order VIII Rule 10, prohibits the courts, from extending the time for filing the written statement beyond the period of 120 days.

The Hon'ble Apex Court, *inter alia*, settled three important issues while dealing with the disputes in the present case, which are briefly discussed herein below:

i. Time Limit of 120 days to file the written statement is mandatory:

The Hon'ble Court held that in terms of proviso to Order V Rule 1 and provisos to Order VIII Rule 1 and 10, it is abundantly clear that a clear consequence is provided for failure of a party to file written statement after the lapse of 120 days from the date of serving of the summons in a suit, i.e. the right shall get forfeited. Therefore, the time limit of 120 days provided in the Code, for filing of written statement, is mandatory in nature. In other words, a written statement, if not filed by a party within the aforesaid period of 120 days, the same shall not be taken on record by the court as the court has no power to extend the period of 120 days.

ii. Pendency of application under Order VII Rule 11 is not a valid reason for not filing the written statement within 120 days:

The Apex Court held that the Respondent's reason of pendency of application under Order VII Rule 11 could not be said to be a valid ground/ reason to justify the delay in filing the written statement. The Court held that the filing of written statement and application under Order VII Rule 11 are independent of each other and even if the said application is pending adjudication, the Respondent was still bound to file its written statement within 120 days from the date of service of summons.

iii. **Courts cannot abuse their inherent power under Section 151 of the Code:**

The Hon'ble Apex Court also held that the courts cannot abuse their inherent powers under Section 151 of the Code to circumvent or bypass the consequences arising from a mandatory procedural provision like in the instant case. The Apex Court also held that the courts do not have any power to condone the delay in filing the written statement beyond the time limit of 120 days and therefore, the order dated 05.12.2017 as well as order dated 24.09.2018 were set aside and the delayed written statement filed by the Respondent was liable to be taken off the record.

The Hon'ble Apex Court while passing this judgment has not only settled the mandatory nature of period of 120 days prescribed in the Code to file the written statement in a commercial dispute but has also settled a very important issue i.e. whether pendency of application under Order VII Rule 11 can be used as a ground to avoid filing of written statement. The decision of the Apex Court on this aspect is very welcoming inasmuch as it will curb the dilatory tactics of filing such applications for rejection of plaint on frivolous grounds and defendant shall be bound to file their written statement within the stipulated period of 120 days.

Insofar as the decision of the Apex Court holding that even inherent powers of the courts under Section 151 of Code cannot be used to extend the time for filing of the written statement beyond maximum permissible period of 120 days, the same again in line with already settled position that inherent powers under Section 151 of the Code cannot be invoked / exercised in the event there are specific provisions available either in the Code, or any other law for the time being in force, dealing with particular issue.

In light of the above analysis, the present judgment of the Hon'ble Apex Court is a good precedent and will certainly result in expeditious disposal of commercial disputes/ suits.

© 2019 All rights reserved. This article is for information purposes only. No part of the article may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the explicit written permission of Singhanian & Partners LLP, Solicitors & Advocates ("The Firm").

Disclaimer: Though every effort has been made to avoid errors or omissions in this article, errors might creep in. Any mistake, error or discrepancy noted by the readers may be brought to the notice of the firm along with evidence of it being incorrect. All such errors shall be corrected at the earliest. It is notified that neither the firm nor any person related with the firm in any manner shall be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom