

**HIGH COURT OF DELHI
CORAM: HON'BLE MS. JUSTICE SHALINDER KAUR**

Date of Decision: March 27, 2024

CM(M) 1885/2023, CM APPL. 59256/2023—stay

RAJ KUMAR NAIR ...Petitioner

versus

UCO BANK ...Respondent

Legislation:

Article 227 of the Constitution of India

Section 12A of the Commercial Courts Act, 2015

Order IX Rule 7, Section 151, Order VIII Rule 1 of the Code of Civil Procedure, 1908 (CPC)

Subject: Petition under Article 227 of the Constitution of India challenging orders passed by the Learned District Judge (Commercial) in a commercial suit involving the non-recording of petitioner's written statement and dismissal of his application for condonation of delay.

Headnotes:

Civil Procedure – Application for Condonation of Delay – The High Court deliberated upon the application for condonation of delay in filing the written statement. The court examined the reasons for the delay and the applicability of the Proviso to Order VIII Rule 1 CPC in the context of the Commercial Courts Act. [Para 28-37]

Interpretation of Order VIII Rule 1 CPC – held – emphasized that the period of 30 days for filing the written statement commences from the date of service of summons. The court clarified that the outer limit for filing is 120 days, beyond which the court has no power to extend the period. However, it acknowledged the court's discretion in allowing the written statement on specified days for recorded reasons, within the 120-day limit. [Para 28, 30-31, 35]

Application for Condonation of Delay – allowed – The court, considering the peculiar facts and circumstances, including the petitioner's lack of knowledge about the business and transactions with the bank due to his father's management and subsequent death, found the delay of 17 days justifiable. The court held that the petitioner explained the delay adequately and condoned the delay, subject to payment of costs. [Para 34-36]

Decision – Setting Aside Impugned Orders – The High Court set aside the impugned orders dated 11.04.2023 and 17.10.2023, taking the written statement on record subject to payment of costs by the petitioner. It directed that the delay of 17 days in filing the written statement is condoned, thereby allowing the petition. [Para 36-37]

Referred Cases:

- Elamkunnappuzha Panchayath v. Dinkar [AIR 2005 Kerela 263]
- Rajesh Katpal vs Shubh Steel CM(M) 991/2022 decided on 12.10.2022
- Red Bull AG vs Pepsico India Holdings Pvt. Ltd 2019 (177) DRJ 398
- Suo Moto Writ Petition (Civil) No. 03/2020
- SCG Contracts India Pvt. Ltd. & Ors. vs K.S. Chamankar Infrastructure Pvt. Ltd AIR 2019 SC 2691
- M/s AP Distributors & Anr. vs M/s OK Play India Pvt. Ltd. [SLP(C) 9733-9734/2022] (SC)

Representing Advocates:

Mr. Ajit Nair and Mr. Harsha for the petitioner
Mr. Gaurav Gupta for the respondent

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India impugning the orders dated 11.04.2023 and 17.10.2023 passed by the Learned District Judge (Commercial), North West, Rohini, Delhi (in short "Commercial Court") in CS(COMM) No. 134/2020 titled as "*UCO Bank vs Triveni Fashion*" whereby the written statement of the petitioner herein was not taken on record in absence of any application for condonation of delay being filed and subsequently, the application for condonation of delay was filed along with an application seeking review of the order dated 11.04.2023, was dismissed with a cost of Rs. 5,000.
2. The petitioner herein is the proprietor of the firm M/s Triveni Fashion which was engaged in the manufacturing of garments. The firm was set up and managed by petitioner's father but was registered in the petitioner's name.
3. The respondent is a commercial bank and a Government of India undertaking with its Corporate Office at 10, BTM Sarani, Kolkata 700001 and having its branch office, amongst other places, at Ayodhya Chowk, F26/13, Sector 7, Rohini, Delhi.
4. Back in 2017, to gather funds to set-up the aforesaid business, the Petitioner's father had approached and requested the respondent bank for sanction of Term Loan/Demand Cash Credit for an amount of Rs. 5 Lakhs under the Pradhan Mantri Mudra Yojana through the loan application dated 25.12.2017, wherein the petitioner stood as applicant for repayment of such loan amount. Consequently, the respondent bank sanctioned an amount of Rs. 5 lakhs as cash credit and through hypothecation of goods secured a Demand Cash Credit dated 01.01.2018 and also endorsed Demand Promissory Note & DP Note of Rs. 5 lakhs. It is stated that the amount was also liable for an interest payable @ 8.60% per annum.

5. Thereafter, the petitioner's father and mother expired on 17.10.2019 and 25.12.2019, respectively. Thus, due to the unfortunate demises, the firm M/s Triveni Fashion came to be closed.
6. It is the petitioner's stand that he was young and did not have any knowledge of the business that was managed by his late father who was party to the transactions made with the respondent. However, the petitioner requested the respondent bank to seek redemption of dues from the Stock and Machinery/hypothecated goods of the closed business that was lying with him. Despite repeated requests from the petitioner, the respondent bank did not take steps in this regard.
7. As per the mandate of Section 12A of the Commercial Courts Act, 2015, pre-mediation was instituted and it came with a non-starter report dated 07.03.2020 passed by the DLSA, District North-West. Thereafter, the respondent bank filed a commercial suit for recovery of Rs. 9.81 lakhs against the petitioner on 06.08.2020. Summons of which were not received by the petitioner as during this time, the house of the petitioner was mostly closed due to ill health of the petitioner and his family members. Soon thereafter, the Covid Pandemic ensued and the petitioner again could not approach the bank to settle the subject Account with the respondent.
8. Accordingly, since none appeared for the petitioner herein on 29.09.2021, the petitioner was proceeded ex-parte in the commercial suit
9. In the meanwhile, the summons of the suit i.e. a registered envelop from the District Court, Rohini, was received by the neighbor of the petitioner namely Mr. Bharat, who informed the same to the petitioner only in February, 2022. Thereafter, the petitioner took steps and engaged an advocate and filed an application dated 09.02.2022 under Order IX Rule 7 of CPC for setting aside the ex-parte order dated 29.09.2021. The application contained the Death certificates of his parents, Medical bills for treatment of petitioner due to injuries to head, leg and a dog bite over the period of time and the medical treatment record of the Sister-in-law (brother's wife) of the Petitioner.
10. On 03.03.2022, the petitioner filed another application under Section 151 CPC seeking directions to the respondent to collect all the hypothecated goods/machinery and belongings to realize the outstanding dues against the petitioner. Through both the applications, the petitioner also informed the learned Commercial Court that the respondent had not provided him with legible documents with the plaint.

11. Subsequent thereto, the learned Commercial Court vide order dated 27.05.2022 directed the respondent to provide the petitioner with all the documents filed along with the plaint through email and listed the suit for filing the written statement on 28.09.2022 as well as hearing of the application under Order IX Rule 7 CPC and application under 151 CPC.
12. On 01.06.2022, the documents of the suit are stated to be served for the first time by the counsel for the respondent to the counsel for the petitioner through an email on the onset of the summer vacations. It is stated that the documents sent through email were not legible and the documents of the respondent were only received by the petitioner upon re-opening of the court. As the bank transactions were dealt by the father of the petitioner and in view of his demise, the petitioner could not properly peruse the documents of the respondent bank.
13. Consequently, the petitioner on 18.07.2022 filed the written statement along with the Statement of truth and the affidavit of admission and denial.
14. The respondent did not file any reply to the application under Order IX Rule 7 CPC and addressed arguments. Thereafter, vide order dated 05.12.2022, the application under Order IX Rule 7 was allowed and the exparte order dated 29.09.2021 was set aside by the learned Commercial Court and the suit was listed for 07.03.2023 for consideration of the written statement to be taken on record.
15. The learned Commercial Court vide impugned order dated 11.04.2023 did not take on record the written statement of the petitioner in absence of any separate application filed for condonation of delay.
16. To remedy this, the petitioner on 24.04.2023 filed its application for condonation of delay in filing the written statement along with an application seeking review of the order dated 11.04.2023.
17. Vide impugned order dated 17.10.2023, the learned Commercial Court dismissed the aforesaid applications and imposed the cost of Rs. 5,000 upon the petitioner.
18. Unsettled by the impugned orders, the petitioner has preferred the present petition before this court.

Submissions of the parties:

19. Learned counsel for the petitioner submitted that the learned Commercial Court erred in not following the principle of law with respect to setting aside

the ex-parte proceedings and the time for filing the written statement which was clarified in the case of ***Elamkunnapuzha Panchayath v. Dinkar*** [AIR 2005 Kerela 263].

20. Learned counsel submitted that the learned Commercial Court did not appreciate the judgements of this court in ***Rajesh Katpal vs Shubh Steel*** CM(M) 991/2022 decided on 12.10.2022, whereby it was held that the limitation period for filing written statement starts only after service of documents by Plaintiff upon defendant even in commercial suits. Further in the case of ***Red Bull AG vs Pepsico India Holdings Pvt. Ltd*** 2019 (177) DRJ 398, it was held that for sufficient cause of delayed court process, the time taken in filing written statement can be condoned in absence of a formal application.
21. Further submitted that the learned Commercial Court has taken too technical a view of the matter and there is a strong reason for allowing the condonation of delay in view of petitioner having taken immediate bonafide steps.
22. Learned counsel also submitted that the learned Commercial Court did not take into account that the written statement mentions the reasons for delay in defending the present suit since he had no knowledge of the subject transactions with the respondent bank relating to period of 2017-2018, as the same were transacted by his late father. In view of having no knowledge of the same, preparing a proper defence took time and hence the same was the reason for the delay of 17 days in filing the written statement.
23. Further submitted that the non-filing of application for condonation of delay was not a patent mistake and was only a curative defect which in the interest of justice could have been allowed to be cured. The learned Commercial Court also erred in interpreting the provision which provides for a total of 120 days for the written statement to be taken on record subject to payment of costs and recording reasons of such delay. However, in the present case, there was only a delay of 17 days above 30 days happened which could have been condoned in view of the provision provided under the CPC as amended by the Commercial Courts Act.
24. Reliance was also placed on ***Suo Moto Writ Petition (Civil) No. 03/2020*** and ***SCG Contracts India Pvt. Ltd. & Ors. vs K.S. Chamankar Infrastructure Pvt. Ltd*** AIR 2019 SC 2691.
25. The submissions were controverted on behalf of the respondent thereby submitting that the petitioner was served through whatsapp in November

2020, however, by way of abundant precaution, he was also ordered to be served through registered AD which service was completed on 26.12.2020. Nonetheless, the petitioner did not choose to appear before the learned Commercial Court and was proceeded ex-parte on 29.09.2021. It is submitted that the said ex-parte order was set aside by learned Commercial Court by specifically observing that though the application under Order IX Rule 7 CPC was allowed, however, the issue was kept open whether the written statement filed subsequently on 19.07.2022 can be taken on record as the petitioner had appeared on 10.02.2022 and the service was completed.

26. The learned counsel for the respondent submitted that while the petitioner was served through registered AD post on 26.12.2020, he had received the entire set of documents. It was submitted that even if it is assumed for the sake of arguments that the petitioner had received the complete set of petition along with the documents on 01.06.2022, then also the period of limitation for filing the written statement commenced on 01.06.2022 but the petitioner failed to file the written statement within 30 days which came to be filed on 19.07.2022 without an application seeking condonation of delay. Therefore, learned Commercial Court was correct in its view vide order dated 11.04.2023 not to allow the petitioner to file the written statement after expiry of 30 days without specifying any reasons to do so.
27. It was further submitted that subsequently, along with the review application though the petitioner had moved an application seeking condonation of delay which also does not inspire any confidence as no cogent reason had been furnished by the petitioner while seeking condonation of delay in filing the written statement after 17 days of expiry of 30 days, thus, same was aptly rejected by learned Commercial Court with cost.

Analysis & Conclusion

28. The position of law is well settled that the period of 30 days for filing the written statement is to be reckoned from the date of service of summons in a suit upon the defendant. The outer limit within the written statement can be filed by the defendant is of 120 days and thereafter, the Court has no power to extend the period for filing the written statement after expiry of 120 days. Nonetheless, the Proviso to Order VIII Rule 1 of CPC provides 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.

29. It is not disputed that at the time of passing the impugned order dated 11.04.2023, no application for delay was filed. Apparently, while deciding the application seeking review of the order dated 11.04.2023, the learned Commercial Court has not considered the reasons assigned in the application seeking condonation of delay in filing the written statement but while dismissing the review application has merely observed that the application seeking condonation of delay is in the teeth of order dated 05.12.2022. It is pertinent to note that on 05.12.2022, an application moved on behalf of the petitioner under Order IX Rule 7 CPC was allowed and the ex-parte order dated 29.09.2021 was set aside, the Court had observed while passing the order “however it shall not extend the limitation for filing the written statement. The same would be governed by the judgment of the Hon’ble Supreme Court in **Suo Moto Writ Petition (Civil) No. 03/2020** as well as judgment of Hon’ble Supreme Court in **SCG Contracts India Pvt. Ltd. v. K. S. Chamankar Infrastructure Pvt. Ltd. & Ors.** [AIR 2019 SC 2691].

30. Noticeably, the learned Commercial Court failed to consider the Proviso to Order VIII Rule 1 CPC, which reads as under:-

“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.”

31. Thus, without considering the reasons for the delay in filing the written statement, the learned Commercial Court outrightly dismissed the application. Relevantly, the learned Commercial Court, while passing the impugned order dated 11.04.2023 had considered that the petitioner had received the complete set of plaint along with documents on 01.06.2022 and period for limitation for filing of the written statement was to commence after he received the complete set of documents. The court has further observed that the summer vacations for the court commenced from 06th June, 2022 to 30th June 2022. As the written statement was not supported with any

application seeking condonation of delay in filing the written statement and the period for filing written statement had expired even the period was to be reckoned from 01.06.2022, therefore, the written statement was not taken on record.

32. However, while disposing of the application seeking review of the order, the learned Commercial Court failed to consider the said observations and probably got carried away with the fact that the application seeking condonation of delay was not to be considered at all.
33. In the case of **M/s AP Distributors & Anr. vs M/s OK Play India Pvt. Ltd.** [SLP(C) 9733-9734/2022], the Hon'ble Supreme Court had considered the application for condonation of delay which was filed beyond the period of 120 days and allowed the written statement filed on 34th day of service of notice of summons and held as herein under:-

"Leave granted.

Having heard learned counsel for the respective parties and in the facts and circumstances of the case and considering the fact that the written statement was filed on the 34th day of the service of notice of summons, however, the application for condonation of delay was filed which was beyond the period of 120 days, the High Court has taken too technical view in setting aside the order passed by the learned Commercial Court directing to accept the written statement filed on behalf of the appellants/defendants. The High Court was not justified in setting aside the order passed by the learned Trial Court directing to take the written statement on record.

In view of the above and for reasons stated hereinabove, the present appeals succeed. The impugned judgment and orders passed, by the High Court are hereby quashed and set aside and- the order passed by the learned Trial Court directing to take written statement on record after condoning the delay in submitted the written statement is hereby restored.

The present Appeals are accordingly allowed. No costs."

34. In view of the above, it is necessary to consider the reasons stated by the petitioner seeking condonation of delay of 17 days in filing the written statement. Undisputedly, the written statement has been filed though after completion of 30 days but before expiry of 120 days as provided under the law. The petitioner has submitted that his counsel in the month of June, 2022 was on vacation and therefore, he could not communicate, meet and discuss with him about the case for drafting the written statement. The counsel immediately upon re-opening of the court after summer vacation in July, 2022 contacted the petitioner. It is also submitted that the printouts of the documents sent by the respondent were not legible and the same were not in

the power and possession of the petitioner to compare and cross check their veracity which caused further delay in preparing the written statement. It is submitted that the particulars of the documents related to the period of 2017-2018 when the transactions were dealt by the bank with father of the petitioner and not by the petitioner. The father of the petitioner had expired on 17.10.2019 and therefore, the petitioner was helpless in this regard. Hence he had no knowledge of the said documents to prepare proper defence expeditiously. He took lot of time to collect the information, required to prepare the written statement, hence the delay of approximately 17 days in filing the written statement which came to be filed on 18.07.2022.

35. The peculiar facts and circumstances of the case are that the father of the petitioner was infact carrying out the business of garments manufacturing with financial assistance of the respondent bank. After the death of the father of the petitioner his firm was closed and the petitioner has averred that he has no knowledge of the business, which was conducted by father. In these circumstances, it was submitted that the petitioner was not prompt in giving the details of the case and the defences to be prepared on his behalf which had caused the delay of 17 days in filing the written statement. It is not disputed that the petitioner had received the entire set of documents on 01.06.2022 and the summer vacations had embarked from 06.06.2022 to 30.06.2022. Therefore, in the peculiar circumstance of the present case, the petitioner has explained the delay of 17 days in not filing the written statement within period of 30 days after receiving the complete set of documents. The learned Commercial Court erred in not considering the cause of delay as mentioned in the application moved on behalf of the petitioner while passing the impugned order dated 17.10.2023.

36. In order to avoid another round of litigation, the Court believes that the respondent can be suitably compensated with costs for the negligence of the petitioner. Accordingly, the delay of 17 days in filing the written statement is condoned. The impugned orders dated 11.04.2023 and 17.10.2023 are set aside. The written statement is taken on record, subject to cost of Rs. 20,000/- to be paid by the petitioner to the respondent before the learned Commercial Court on the next date which is fixed before it.

37. Consequently, the petition is allowed and pending application stands disposed of.

*Disclaimer: Always compare with the original copy of judgment from the official website.