

HIGH COURT OF DELHI
CORAM: HON'BLE MS. JUSTICE SHALINDER KAUR
Date of Decision: March 27, 2024

CM(M) 1387/2022

ICICI BANK LTD. ...PETITIONER

VERSUS

ANIRUDH CHAUHAN ...RESPONDENT

Legislation:

Article 227 of the Constitution of India

Section XIII (1A) of the Commercial Courts Act, 2015

Order VIII Rule 1, Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908

Subject: Petition challenging the condonation of delay in filing a written statement by the respondent in a commercial suit regarding a loan default.

Headnotes:

Commercial Law – Condonation of Delay in Filing Written Statement – adjudicated upon the condonation of delay in filing the written statement by the respondent in a commercial dispute under the provisions of the Commercial Courts Act, 2015. The primary contention revolved around whether the delay beyond the statutorily prescribed period could be condoned under Order VIII Rule 1 of the Code of Civil Procedure, 1908. [Para 1-10, 13, 15, 25-26]

Service of Summons – Interpretation of Proper Service – The court analyzed the correctness of service of summons upon the respondent and its implications on the obligation to file the written statement within the prescribed timeframe. The impact of the mediation process on the computation of the period for filing the written statement was also examined. [Para 7-8, 17-18, 20]

Supreme Court Guidelines – Compliance in Commercial Disputes – The judgment referred to the Supreme Court precedent in “M/s SCG Contracts India Pvt Ltd Vs K S Chamankar Infrastructure Pvt Ltd” to determine the permissible limits for condoning delay in commercial disputes. It emphasized the strict timelines set by the Supreme Court for filing written statements in such matters. [Para 9, 14, 15, 25]

Decision – Non-Condonation of Delay – High Court set aside the Commercial Court's order allowing the condonation of delay - Court directed that the written statement filed beyond the permitted timeframe should not be taken on record. [Para 26]

Referred Cases:

- M/s SCG Contracts India Pvt Ltd Vs K S Chamankar Infrastructure Pvt Ltd 2019 (12) SCC 210
- Machine Tools Aids India Vs M/s GNC Infra LLP & Anr CM(M) 1325/2022

Representing Advocates:

Petitioner: Mr. Deepak Kaushik

Respondent: Mr. Rajbir Singh Bal and Mr. Ajay Pratap Singh

J U D G M E N T

1. The present petition under Article 227 of the Constitution of India read with Section XIII (1A) of the Commercial Courts Act, 2015 (hereinafter “the Act”) arises out of the order dated 30.08.2022 passed by the court of the learned District Judge, Commercial Court-03, Central District, New Delhi (hereinafter “Commercial Court”) in CS(COMM) No.3614/2021 titled as “*ICICI Bank Ltd vs Anirudh Chauhan*” (hereinafter “Impugned Order”). Vide the impugned order, the learned Commercial Court allowed the application filed by the respondent/defendant seeking a condonation of delay in filing their written statement.
2. The facts relevant for the disposal of the present petition are that the respondent herein approached the petitioner bank, requesting a grant of a personal loan for the amount Rs. 10,00,000/- vide a credit facility application. Upon execution of the credit facility application, along with the terms and conditions for the loan agreement, the loan was granted to the respondent herein. As per the terms of agreement, the respondent agreed to repay the loan in 60 equated monthly instalments of Rs. 21,965.00/- each, with an interest rate of 11.50% per annum. The loan agreement was executed on 08.08.2019.
3. As per the loan account maintained by the petitioner till 31.07.2021, the respondent has paid an amount of Rs. 3,90,412.00/- towards the monthly equated instalments and had defaulted in the payment of Rs. 1,14,783.00/- along with late payment and cheque bouncing charges of Rs. 22,891.00/- amounting to Rs. 1,37,674/-. Other than this, the respondent is yet to pay the equated monthly instalment amount of Rs. 8,12,686/- as on 31.07.2021.
4. Owing to the defaults by the respondent, the petitioner, as per terms of the loan agreement, recalled the loan facility availed by the respondent vide notice dated 25.06.2021 and the respondent was asked to pay the total outstanding amount, failing which the credit facility extended to the

respondent would be withdrawn and he would be liable to pay the total aggregate sum of Rs. 8,70,286/- within 07 days.

5. As the notice was not complied with by the respondent, the petitioner then proceeded to file a civil suit bearing CS(COMM) No.3614/2021 for the recovery of Rs. 8,64,111.00/- along with interest at the rate of 11.50% per annum. The suit along with an application under section 12(A) of the Act and an application under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (hereinafter "CPC") was listed before the learned District Judge (Commercial) on 25.09.2021, whereby the learned Commercial Court heard submission on both the applications. The application under section 12(A) of the Act was allowed and disposed of while on the application under Order XXXVIII Rule 5 of the CPC, notice was to be issued to the respondent. Thereafter, the respondent was directed to file written submissions within 30 days of service.
6. Summons were issued as per the order dated 25.09.2021. Thereafter, the matter was adjourned to 04.02.2022, however, due to the presiding officer being on leave, the matter was further adjourned to 08.04.2022. On 08.04.2022, both parties requested that the matter be sent to mediation. The mediation was to take place in the Mediation cell, Tis Hazari Courts on 19.04.2022. Thereafter, the matter was adjourned to 09.05.2022 for settlement and on 09.05.2022, the counsel for the respondent sought time to file written statement owing to which the matter was further adjourned to 06.07.2022.
7. The learned Commercial Court on 06.07.2022 dismissed the petitioner's application under Order XXXVIII Rule 5 of the CPC for attachment of property of respondent due to insufficiency of material on record. Further, the court directed the petitioner to file its reply to the application under Order VIII Rule 1 moved by the respondent along with affidavit of Admission/Denial and put up the matter for disposal on 30.08.2022.
8. Vide the impugned order, while allowing the respondents application under Order VIII Rule 1 of the CPC, the learned Commercial Court observed that the petitioner was served through his cousin on 05.12.2021, however, the summons served upon him does not find mention of the fact that the written submissions are to be filed within 30 days from the date of receipt of summons. The learned Commercial Court further observed that the respondent filed his written statement on 06.07.2022 along with an application under Order VIII Rule 1 for condonation of delay and therefore, condoned the

delay in filing the written statement. Thereafter, the matter was renotified to explore the possibility of a settlement.

Submission on behalf of the petitioner:

9. It is submitted by the petitioner that the learned Commercial Court has erred in condoning the delay ignoring the directions passed by the Hon^{ble} Supreme Court in “***M/s SCG Contracts India Pvt Ltd Vs K S Chamankar Infrastructure Pvt Ltd***” 2019 (12) SCC 210 holding that the commercial court has no power to condone the delay after the expiry of 120 days in any circumstance.
10. It is submitted that the learned Commercial Court failed to appreciate that no plausible reason for condoning the delay was given by the respondent. The application moved by the respondent was frivolous and learned Commercial Court could not have allowed the same. It was submitted that in such circumstances, the written statement could not have been allowed to form a part of the record. The impugned order thus be set aside.

Submissions on behalf of the respondent:

11. The respondent submits that no prejudice was caused to the petitioner by allowing the written statement of the respondent and that the learned Commercial Court was justified in allowing the respondents application under Order VIII Rule 1, as per the decision of the this Court in “***Machine Tools Aids India Vs M/s GNC Infra LLP & Anr***” CM(M) 1325/2022. In the absence of issuance of valid summons, it cannot be assumed that the respondent / defendant had knowledge of the obligation to file its written statement within 30 days from the date of service of summons. Moreso, the time spent by parties in mediation center making efforts to settle their disputes is to be excluding while computing the period of 120 days in filing the written statement. Thus, by taking into account the overall circumstances of the cases, the learned Commercial Court has rightly allowed the respondent to file his written statement.
12. It is further submitted that the bonafide of the respondent was signified on 09.05.2022, when the respondent had filed his written statement. Owing to the incorrect format of the same, the respondent was forced to refile the same in the manner prescribed by the learned Commercial Court. It is further submitted that the summons were not served upon the respondent himself, but the cousin of the respondent and it cannot be said that the respondent was duly served and therefore, the written statement cannot be said to be

filed beyond 120 days without reasonable cause, the petition accordingly be dismissed.

13. Order VIII Rule 1 of CPC provides 30 days from the date of service of summons as the time within which the written statement may be filed by the defendant. The Proviso to Order VIII Rule 1 of Code of Civil Procedure, 1908 is significant with respect to the controversy involved in the present case, which is reproduced herein below:-

“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.”

14. In the case of **“M/s SCG Contracts India Pvt Ltd Vs K S Chamankar Infrastructure Pvt Ltd” (supra)**, the Hon^{ble} Supreme Court considered the provision of Order VIII Rule 1 CPC and held as under:-

“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 farther 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 farther 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.”

15. Resultantly, while the normal period for filing the written statement in answer to the suit would expire in 30 days from the date of service of summons, the written statement may be filed within a further period of 90 days subject to the reasons to be recorded in writing by the Court. The position of law is limpid that in commercial suits, the Court is not bestowed with power to condone the delay beyond 120 days.

16. It is important to refer to the impugned order whereby the learned Commercial Court after noting the submissions of the parties, condoned the delay in filing the written statement and disposed of the application under Order VIII Rule 1 of the CPC thereby permitting the respondent to place the written statement on record. The impugned order thus held as under:-

“An application U/o VIII Rule 1 CPC filed on behalf of defendant is pending consideration. Application strongly objected on behalf of plaintiff.

Perusal of record shows that Defendant had appeared for the first time on 08.04.2022. The Court order sheet reflects that Defendant was served through his cousin on "05.12.2021". "The process served upon defendant does not find mention that written statement is to be filed within a period of 30 days from the date of receipt of summons ". The Defendant filed written statement on 06. 07.2022 along with application U/o VIII Rule 1 CPC for condonation of delay. Accordingly, the delay in filing written statement stand condoned. Application U/o VIII Rule 1 CPC stands disposed off"

17. It needs to be noted that learned Commercial Court has correctly observed that the summons served upon the respondent on 05.12.2021 does not find mention of the fact that the written statement is to be filed within a period of 30 days from the receipt of the summons. The respondent in the present case was served with the summons through his cousin on 05.12.2021, however, he had appeared in the Court for the first time on 08.04.2022. Though, the time period of 30 days has not been mentioned but the summons specifically state that the respondent had to appear in person or through a pleader, duly instructed to be able to answer all material questions related to the suit on 04.02.2022 at 10:00 o'clock in the forenoon. He was further directed to file on that day, **a written statement on his defence and to produce all documents in his possession or power, on which he would raise his defence or claim for set off or counter claim.** Accordingly, it is clear from the language of the summons that the respondent was put to sufficient notice to raise his defence by way of a written statement and documents in response to the suit filed by the petitioner and he had to appear on 04.02.2022 before the Court.

18. It is a matter of record that on 04.02.2022, when the respondent was to appear for the first time, the presiding officer was on leave and the matter was adjourned to 08.04.2022. On the said date of hearing, the ordersheet was recorded by the Reader of the Court, who has mentioned contrary to the record that the defendant is yet to be served, however, the same was not the correct position as the respondent already stands served on 05.12.2021 through his cousin, which is a valid service. Therefore, on 04.02.2022, the respondent was required to file his written statement but he neither appeared nor furnished the written statement. Moreover, even on the next date of hearing i.e. 08.04.2022, the respondent again defaulted in filing the written statement. Nonetheless on 08.04.2022, both the parties requested to the Court to refer the matter to the mediation cell to explore the possibilities of settlement and the matter was listed on 19.04.2022.

19. Needless to say, on 08.04.2022, while referring the parties for mediation, the learned Commercial Court has specifically recorded that **„however, it is made clear that reference of matter to mediation cell will not be a ground to extend the period of limitation in filing the written statement“**.

20. Apparently, the respondent failed to take notice of the said directions of the learned Commercial Court. Thereafter, 09.05.2022, on the date which, the case was referred back as unsettled before the learned Commercial Court and the counsel for the respondent again took an adjournment to the file written statement, however, within a prescribed period, if necessary along with an application for condonation of delay. The matter was re-notified for 06.07.2022. Thus, no written statement came to be filed on 09.05.2022

21. It is important to note that on 06.07.2022, the application moved on behalf of the petitioner under Order XXXVIII Rule 5 CPC was dismissed. On the same date, the respondent had moved an application under Order VIII Rule 1 CPC along with written statement and other annexures, the matter was re-notified for hearing arguments on the application under Order VIII Rule 1 CPC on 30.08.2022. On the said date of hearing, the learned Commercial Court had allowed the application under Order VIII Rule 1 CPC of the respondent thereby the delay in filing the written statement was condoned.

22. It is queer that the learned Commercial Court has allowed the application for condonation of delay in filing the written statement without mentioning the number of days in the delay, which was condoned and the reasons which were found to be satisfying the learned Commercial Court while allowing the said application.

23. Furthermore, the application under Order VIII Rule 1 CPC read with Section 151 CPC for condonation of delay does not assign any cogent reason for condoning the delay in filing the written statement, other than stating that on the previous date of hearing i.e. 09.05.2022, the respondent filed the written statement but due to some issue in the format of the written statement, the Court directed him to file the written statement in prescribed performa, within a prescribed period along with an application for condonation of delay. However, the submissions made in the application are contrary to the orders passed by the learned Commercial Court on 09.05.2022. Even if for the sake of argument, it is assumed that the respondent had filed a defective written statement and not according to law as prescribed under Commercial Courts Act, 2015, it was the duty of the respondent being a diligent litigant to immediately file an appropriate written statement as per the protocol to be followed by the Commercial Courts Act, 2015. The respondent has not shown any reason that prevented him from filing the written statement after

09.05.2022 and for waiting till 06.07.2022 to file a proper written statement as per the law.

24. Reading of the impugned order dated 30.08.2022 of learned Commercial Court reveals that the Court has not considered, on merits, the respondent's application for condonation of delay and the order has been passed in haste and in a very casual manner, which apparently is cryptic & obscure, so much so that the reasons have not been recorded while allowing the application seeking condonation of delay in filing the written statement.

25. In view of the above, the respondent had an opportunity to file his written statement on 04.02.2022 after he was served on 05.12.2021 as respondent has the knowledge that the written statement was required to be filed. Nonetheless, in all probability, the written statement should have been filed by 09.05.2022, however, the respondent ignored the clear directions of the learned Commercial Court that the reference of the matter to mediation cell will not be the ground to extend the period of limitation in filing the written statement. The written statement in the present case has been filed on 06.07.2022. The respondent has failed to assign sufficient cause of delay in filing the written statement after his service on 05.12.2021. The respondent thus cannot avail a further grace period of 90 days after expiry of 30 days in filing the written statement as no valid and cogent reason has been shown by the respondent in not filing the written statement within 30 days after his service on 05.12.2021 or thereafter.

26. Resultantly, the impugned order in my considerate opinion deserves to be set aside. The written statement is ordered to be taken off the record. Consequently, the petition is allowed.

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