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BOMBAY HIGH COURT: MANDATORY TIMELINE FOR FILING WRITTEN STATEMENT IN 120 DAYS UNDER CPC NOT APPLICABLE TO 'TRANSFERRED' COMMERCIAL SUITS

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A single judge of the Hon'ble Bombay High Court (S.J. Kathawalla, J.) (Court) in *Reliance General Insurance Co v Colonial Life Insurance Co (Comm Suit No. 29 of 2013)* has held that the mandatory timeline of 120 days for filing a written statement in a commercial suit, would not apply to suits filed prior to the enactment of the Commercial Courts Act, 2015 (the Act). In a suit filed prior to the enactment of the Act and subsequently transferred as a 'Commercial Suit' to be heard by the designated commercial court (Transferred Commercial Suits), the mandatory timeline to file its written statement within a period of 120 days from the date of service of a writ of summons on the defendant would not apply.

FACTS

A suit was filed by Reliance General Insurance Company (Plaintiff) against Colonial Life Insurance Company Limited (Defendant No 1), in the year 2013 i.e., prior to the enactment of the Act. Pursuant to the enactment of the Act, the said suit was treated as a Transferred Commercial Suit. Defendant No 1, however, did not file its written statement within the prescribed period of 120 days as mandated under sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (CPC) as amended by the Act. Therefore, Defendant No 1 sought condonation of its delay, based on the provisions of proviso to Section 15 of the Act. This proviso provides for the non-application of sub-rule (1) of Rule 1 of Order V of the CPC to Transferred Commercial Suits.

ARGUMENTS

Counsel for Defendant No 1 submitted *inter alia* that:

- The Act excludes the applicability of the strict timeline of 120 days to Transferred Commercial Suits and provides the High Court with the necessary power to prescribe new timelines for filing a written statement in so far as transferred suits are concerned.
- Section 15(4) of the Act empowers the Court to hold 'Case Management Hearings' under Order XV-A of the CPC for such Transferred Commercial Suits in order to prescribe new timelines, with a clear proviso that excludes the applicability of the strict timeline of 120 days imposed under Order V Rule 1 of the CPC.

Counsel for Plaintiff submitted *inter alia* that:

- Section 15(4) of the Act only excludes the application of Order V Rule 1 of the CPC and did not exclude the application of Order VIII Rule 1 of the CPC. Order VIII Rule 1 of the CPC deals specifically with the timeline for filing of a written statement in a commercial suit. It was submitted that Order V Rule 1 of the CPC was inapplicable in the present facts, as Defendant No 1 had waived service of writ of summons. The Plaintiff, therefore, argued that the timeline stipulated under Order VIII Rule 1 of the CPC would still apply in the present facts, and that therefore Defendant No 1 had forfeited its right to file a written statement.
- Even if Section 15(4) of the Act was to apply, and if a Court was permitted to grant an extension of time in filing a written statement, such an extension cannot be in excess of 120 days. It was submitted that Defendant No 1, in the present case, had already sought time to file its written statement and more than 120 days had passed since directions were passed to file its written statement. Therefore, the Court ought not to grant a further extension of time to file a written statement.

QUESTION OF LAW

Whether the mandatory timeline of 120 days for filing a written statement in a commercial suit is also applicable to suits which were filed prior to the enactment of the Act and have been subsequently been transferred as commercial suits?

REASONING AND RULING OF THE COURT

The Court observed that the primary aim and object of the Act was to provide speedy disposal of commercial disputes in order to reduce the pendency of cases and facilitate ease of doing business in India. To this end, the concept of 'Case Management Hearings' in respect of Transferred Commercial Suits permitted a Court to prescribe new timelines or issue further directions, as may be necessary, to achieve this object in accordance with Order XV-A of the CPC. Further, the proviso to Section 15(4) of the Act expressly stipulates that the proviso to sub-rule (1) of Rule 1 of Order V of the CPC shall not apply to such Transferred Commercial Suits and the Court may in its "discretion" prescribe new timelines for the filing of a written statement. The Court held that the legislature, while keeping in mind the requirement of speedy disposal of cases, had consciously sought to demarcate commercial suits filed after the enactment of the Act and Transferred Commercial Suits. Thus, the Court held that the strict timeline of 120 days for filing a written statement as applicable to a commercial suit, would not apply to Transferred Commercial Suits.

COMMENT

The Supreme Court of India in *M/s SCG Contracts India Pvt. Ltd. v K.S. Chamankar Infrastructure Pvt. Ltd. & Ors.* (2019 SCC Online SC 226) and Bombay High Court in *Axis Bank Limited v Mira Gehlani & Ors.* (2019 SCC Online Bom 358) have held that in commercial suits, a written statement by the defendant cannot be taken on record after the expiry of 120 days from the date of service of the writ of summons. These decisions, however, did not deal with the question of law in the present case. This decision, therefore, definitively answers this question of law, by delineating Transferred Commercial Suits from commercial suits under the Act. The present judgement also considers the ruling of the Delhi High Court in the case of *AIS Glass Solutions Limited v Moser Baer Solar Limited & Ors.* (2017 SCC OnLine Del 11467). In that case, the Delhi High Court whilst exercising powers under Section 15(4) of the Act, refused to take on record a belated filing of the written statement by the defendant. The present judgement clarifies that the aforesaid decision of the Delhi High Court did not hold as a general rule that the strict timeline of 120 days applicable to commercial suits, also

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applied to Transferred Commercial Suits. Instead, the Delhi High Court refused to take the written statement on record, in the facts of that case. This is consistent with the statutory text, that affords a commercial court with discretion in respect of a belated written statement in a Transferred Commercial Suit.

Having said the above, the conduct of defendant in a Transferred Commercial Suit is of utmost importance in determining whether a defendant ought to be granted further time to file his/her written statement. Courts have traditionally been circumspect in denying a defendant the right to belatedly file its written statement, as it forms the first statement of defence on the substance of the dispute. This decision paves the way to permit belated filing of written statement, in cases where a suit was filed before the commencement of the Act, provided that adequate reasons are given by the defendant to justify the delay. It may lead to granting discretion to the commercial court to either enlarge the timeline to file the written statement from 120 days or reduce it in order to further the object of the Act on speedy disposal of commercial disputes. It is now to be seen whether such discretion would be used positively or negatively by the Courts while deciding on the timeline to file a written statement in Transferred Commercial Suits.

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