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SUPREME COURT: FILING OF WRITTEN STATEMENT WITHIN 120 DAYS FROM ISSUANCE OF SUMMONS IS MANDATORY

1 March 2019

The Hon'ble Supreme Court of India (Supreme Court) in its judgment, in M/s SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors. [Civil Appeal No. 1638 Of 2019] held that the failure to file written statements within the statutory time period of 120 days for filing written statements in a commercial suit will result in the forfeiture of the right of the defendant to file a written statement.

BACKGROUND

M/s SCG Contracts India Private Limited (Petitioner) filed a commercial suit (Suit) on 10 March 2017 against K S Chamankar Infrastructure Private Limited (Respondent) before the Hon'ble High Court of Delhi. The summons in the suit were served upon the Respondent on 14 July 2017 and they filed their written statement on 15 December 2017 which was beyond the statutory time period of 120 days for filing the written statement. The Petitioner filed an application for striking the Respondent's written statement off the record for being time barred under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015 (Act). However, the said application of the Petitioner, despite falling within the provisions of the Act was not allowed, and the written statement was taken on record.

Accordingly, the Petitioner filed a Special Leave Petition (SLP) before the Supreme Court on the ground that the provisions of Order VIII Rules 1 and 10 of the CPC as amended by the Act, no longer gives discretion to courts to allow written statements to be filed beyond 120 days from receipt of summons and therefore a written statement filed beyond the said time period cannot be allowed.

Prior to the said amendment of CPC by way of the Act, there was no demarcation between commercial suits and other suits, and the provisions of the CPC as applicable to other suits were applied to commercial disputes as well, wherein, the court had the discretion to allow written statements to be filed, even after the statutory time period of 30 days extendable by up to 90 days, had expired.

JUDGMENT

The bench of the Supreme Court held as follows:

➤ **Mandatory filing of written statement within 120 days from receipt of summons**

The Supreme Court reviewed the provisions of Order V Rule 1 (1), Order VIII Rules 1 and 10 of the CPC, as amended by the Act, and held that under the aforesaid

provisions a party is granted 30 days' time to file its written statement and a grace period of 90 days is provided, wherein, a court can, after recording the reasons for delay in filing and after imposing costs, allow a written statement to be taken on record. However, if the written statement is filed after 120 days from receipt of summons, the Defendant will be considered to have forfeited its right to file its written statement and the court will have no power to take the same on record in light of the amended provisions laid down in Order VIII Rule 10 of the CPC for commercial disputes.

➤ **Pendency of Order VII Rule 11 Application filed by the Respondent Infrastructure is not a valid ground for delay in filing written statement**

The Supreme Court held that an application for rejection of plaint is independent of filing of the written statement and the filing of such an application cannot be used as an opportunity to retrieve the lost right to file a written statement, which was upheld in *R K Roja v U S Rayudu & Ors*, [(2016) 14 SCC 275], as cited by the Respondent.

➤ **A court cannot use its inherent powers to avoid the consequences ensuing from a procedural provision.**

The Supreme Court by relying on *Manohar Lal Chopra v Rai Bahadur Rao Raja Seth Hiralal*, [(1962) Supp 1 SCR 450], held that where there is a special provision in the CPC that deals with a particular procedure, the same cannot be simply overlooked by taking recourse to the inherent powers of the court and hence the written statement cannot be ordered to be placed on record by exercising the inherent powers of the court.

COMMENT

The Supreme Court, through this judgment has cleared the position of law in relation to filing of written statements in commercial suits. Despite the amendments made by the Commercial Court Act, 2015 to Order VIII Rules 1 and 10 of the CPC, a few benches on the original side were taking the liberty to allow written statements filed beyond 120 days in commercial suits. However, now with the Supreme Court clearly stating the law, this matter ceases to be an arguable one.

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