

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
JUSTICE SUJOY PAUL
&
JUSTICE BINOD KUMAR DWIVEDI
ON THE 13TH OF DECEMBER, 2023**

MISC. PETITION No. 6026 OF 2022

BETWEEN :-

**TELECOMMUNICATIONS
CONSULTANTS INDIA LIMITED
THROUGH ITS JOINT GENERAL
MANAGER (CIVIL), SHRI
BRAJKISHORE YADAV, TCIL
BHAWAN, GREATER KAILASH - I,
NEW DELHI - 119948**

....PETITIONER

(BY SHRI UTTAM MAHESHWARI -ADVOCATE)

AND

- 1. RAJENDRA SINGH KILEDAR
CONSTRUCTION PRIVATE
LIMITED, THROUGH DIRECTOR
RAGHVENDRA SINGH KILEDAR
BAJAR CHOUK BHAISDEHI TEHSIL
BHAISDEHI JILA BETUL (MADHYA
PRADESH)**
- 2. GENERAL MANAGER, MADHYA
PRADESH RURAL ROAD
DEVELOPMENT AGENCY /
CORPORATION, THROUGH
GENERAL MANAGER PIQ - 2,
BEHIND SAHU AARA MACHINE,
VIKAS NAGAR, BETUL (MADHYA
PRADESH)**

.....RESPONDENT

(SHRI PRAMENDRA SINGH THAKUR - ADVOCATE FOR RESPONDENT NO.1)

This petition coming on for hearing this day, JUSTICE SUJOY PAUL passed the following:

ORDER

This petition filed under Article 227 of the Constitution takes exception to the order dated 13.09.2022 whereby the Commercial Court, Bhopal declined to take the written statement of the petitioner on record by holding that it is filed with undue delay.

2. The admitted facts between the parties are that the respondent/plaintiff filed a Class-B suit before District Court, Betul on 21.01.2019 which was registered as RCS-1B/19. After Commercial Courts Act, 2015 (Act of 2015) came into being, the said suit was transferred to Commercial Court, Bhopal on 31.07.2021 and was re-registered on 18.04.2022 as case No. COMMS/06/2022. The petitioner/defendant upon re-registration of the matter under the Commercial Courts Act before Commercial Court, Bhopal submitted his written statement on 13.09.2022. The learned Commercial Court by the impugned order dated 13.09.2022 rejected the same by taking into account the judgment of Supreme Court in **(2019) 12 SCC 210 [SCG Contracts (INDIA) Private Ltd. Vs. K.S. Chamankar Infrastructure Private Limited and Ors]**. The Court below further held that merely because an application filed under Order VII Rule 11 CPC of petitioner/defendant was pending, it cannot be a ground to extend the limitation for filing written statement beyond the period of 120 days.

Contention of Petitioner :

3. Shri Uttam Maheshwari, learned counsel for the petitioner submits that a plain reading of Sub-section 4 of Section 15 along with proviso appended to the Act of 2015 makes it abundantly clear that the intention of law makers was that upon transfer of matter to Commercial Court, the said Court will prepare a fresh time line. If written statement is filed within the said time line prescribed, it cannot be declined. Order V Rule 1 CPC has lost much of its shine in a case of this nature in view of proviso appended therein.

4. The next limb of argument of learned counsel for the petitioner is that curiously, in the judgment of Supreme Court in **SCG Contracts (INDIA) Pvt. Ltd. (supra)**, the Apex Court did not deal with Sub-section 4 of Section 15 and its proviso and therefore, the said judgment is not a hurdle for the petitioner.

5. By placing reliance on a Division Bench judgment of Andhra Pradesh High Court in the case of **Amoda Iron Steel Limited Vs. Sneha Anlytics and Scientifics (Civil Revision No. 1261 of 2020 decided on 25.01.2022)**, Shri Uttam Maheshwari, learned counsel for the petitioner submits that the point involved in the instant case is dealt with *in-extenso* and para Nos. 37 and 61 contain complete answer to the question involved. In the light of aforesaid, the learned Commercial Court has committed an error of law in closing the right of filing written statement by treating it to be barred by time.

Stand of Respondent :

6. Sounding a *Contra* note, Shri Pramendra Singh Thakur, learned counsel for the respondent No.1 submits that in the teeth of Order VIII

Rule 1 CPC, no fault can be found in the impugned order of Court below. Similarly, merely because application under order VII Rule 11 CPC of petitioner was pending, it cannot be a ground to seek extension of time for filing written statement.

7. Faced with this, Shri Maheshwari, learned counsel for the petitioner submits that this point relating to Order VIII Rule 1 CPC is no more *res integra* and the same has been dealt in para-61 of the judgment of Andhra Pradesh High Court in the case of **Amoda Iron Steel Limited (supra)**.

8. Parties confined their arguments to the extent indicated above.

9. We have heard the parties at length and perused the record.

Findings :

10. Before dealing with rival contentions advanced at the Bar, it is apposite to quote relevant portion of Section 15 of the Commercial Courts Act, 2015 :-

“15. Transfer of pending cases :-

(1)

(2)

(3)

(4) The Commercial Division or Commercial Court, as the case may be, **may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines** or issue such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance ¹[with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908) :

Provided that the proviso to sub-rule (1) of Rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) **shall not apply to such transferred suit or application**

and the court may, in its discretion, prescribe a new time period within which the written statement shall be filed.”

(Emphasis Supplied)

11. The language employed in Sub-section 4 aforesaid, makes it crystal clear that after transfer of matter to the Commercial Court, the case management hearing needs to be applied and for that purpose, the Court is obliged to prescribe a new time line or issue further directions. The language of the statute is plain, simple and unambiguous. Thus, it must be given effect to irrespective of its consequences. *{See : Nelson Motis Vs. Union of India and another-AIR 1992 SC 1981}*.

12. A plain reading of judgment of the Supreme Court in **SCG Contracts (India) Pvt. Ltd. (supra)**, makes it clear that the Apex Court has not considered Sub-section 4 of Section 15 of the Act of 2015 in specific. During the course of hearing, learned counsel for both the parties fairly submitted that in the case of **SCG Contracts (INDIA) Pvt. Ltd. (supra)** the suit was directly filed before the Commercial Court and therefore, there was no occasion for the Supreme Court to deal with Sub- section 4 of Section 15 of the Act of 2015.

13. This is trite that a singular different fact may change the precedential value of a judgment (See: **Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. And Ors. reported in (2003) 2 SCC 111**). Since in SCG Contract's case, suit was directly filed before Commercial Court and Apex court did not deal with Section 15 (4) of the Act of 2015, the said judgment is of no assistance to the respondent.

14. The Division Bench in the case of **Amoda Iron Steel Limited (supra)** considered the above judgment of Supreme Court in **SCG Contracts (India) Pvt. Ltd. (supra)** and enabling statutory provisions including Section 15(4) of the Act of 2015 as well as Order V Rule 1 and Order VIII Rule 1 and Rule 10 of the Code of Civil Procedure. It is apt to consider few paragraphs of this judgment :-

“37. Here, we notice an anomaly in the statutory provisions. A comparative study of the second proviso to Order V rule 1 sub-rule(1) CPC and the proviso to Order VIII rule 1 CPC as amended through Section 16 of the Act, 2015 shows that both the provisos are verbatim the same. Section 15(4) of the Act, 2015, which expressly excludes the applicability of the proviso to sub rule(1) of rule(1) of Order V CPC, is silent about the proviso to rules 1 and 10 of Order VIII. On the one hand, proviso to sub rule 1 of rule 1 of Order V CPC shall not apply, meaning thereby that with respect to the suits or applications transferred to the Commercial Court from the civil court under Section 15(1) or (2) the right of the defendant to file written statement shall not be forfeited even if the same is not filed within a period of 120 days from the date of service of summons and further, in view of Section 15(4) itself, the commercial court may in its discretion prescribe a new time period within which the written statement shall be filed, but on the other hand, in view of the proviso to Order VIII rule 1 CPC on expiry of 120 days, the right of the defendant to file the written statement, if the written statement is not filed within that time-limit, shall be forfeited and the court shall not allow the written statement to be taken on record on expiry of such period nor the court shall extend the time for filing the written statement in view of rule 10 of Order VIII CPC. Both the provisions i.e. Section 15(4)

proviso and Order VIII rules 1 and 10, therefore apparently can not be given effect to at the same time.

After dealing with the relevant provisions, it was concluded as under:-

61. We are therefore of the considered view and hold on point No. 1 as under:—

1) where the suit or application has been **transferred** to the Commercial Court under Section 15(2) of the Act, 2015 from the civil court and the procedure for filing written statement had not been completed at the time of transfer, the commercial court shall have the power and jurisdiction to prescribe a new time period for filing written statement, irrespective of the expiry of 120 days from the date of service of summons on the concerned defendant.

2) In a suit or application **transferred** to the commercial court under Section 15(2) of the Act, 2015, the **written statement shall be filed within the new time period prescribed by the Commercial Court in exercise of power under Section 15(4) of the Act, 2015, failing which, on expiry of new time line so prescribed, the defendant shall forfeit his right to file written statement and the court shall neither take the written statement on record nor shall extend the new prescribed time period as mandated by Order VIII rules 1 and 10 CPC.**”

(Emphasis Supplied)

15. We have gone through the aforesaid Division Bench judgment and we are in respectful agreement with the view taken by the Andhra Pradesh High Court. The interpretation advanced by the Division Bench is in consonance with the statutory scheme ingrained in Section 15(4) of the Act of 2015. In Para-61 with utmost clarity, the Division Bench dealt with the impact of Section 15(4) of the Act of 2015 and

Order V Rule 1 and Order VIII Rule 1 and 10 of the Code of Civil Procedure.

16. The Apex Court in **Raj Process Equipments & Systems (P) Ltd. v. Honest Derivatives (P) Ltd., 2022 SCC OnLine SC 1877** has considered the case of **SCG Contracts (India) Pvt. Ltd. (supra)** and also considered its three Judge Bench judgment in **Salem Advocate Bar Association Vs. Union of India, (2005) 6 SCC 344**. The Apex Court in para-13 and 14 has poignantly held as under:

“13. But we do not agree. The suit that became the subject matter of dispute in SCG Contracts India Private Limited, appears to have been filed before the Commercial Court and not before the normal Civil Court. Insofar as the normal Civil Courts are concerned, it is the proviso to Order VIII Rule 1 CPC which applies. In Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344, this Court held that the proviso to Rule 1 of Order VIII CPC is directory and not mandatory. An exception was carved out in SCG Contracts India Private Limited to this Rule, by this Court insofar as the commercial disputes are concerned by invoking the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, to apply the same principle to a matter where the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in Salem Advocate Bar Association, to the proviso to Order VIII Rule 1 CPC.

14. In fact the decision in SCG Contracts India Private Limited is by a 2-member Bench, which was dealing with the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, when the decision of

the 3-member Bench in Salem Advocate Bar Association was cited before this Court in SCG Contracts India Private Limited, this Court held in paragraph 11 that the earlier law on Order VIII Rule 1 has now been set at naught. Therefore, what is to be applied to normal Civil Courts is Order VIII Rule 1 and the interpretation given to the same in Salem Advocate Bar Association.”

(Emphasis Supplied)

17. In view of this judgment also, the impugned order of learned Commercial Court cannot stand judicial scrutiny.

18. In this view of the matter, learned Commercial Court has committed an error of law in declining the written statement without prescribing a new time line as per Sub-section 4 of Section 15 of the Act of 2015. Resultantly, the impugned order dated 13.9.2022 (Annexure P-7) passed in Commercial Suit No.06 of 2022 is **set aside**. The court below is directed to take the written statement on record and prepare a further time line as per Section 15(4) of the Commercial Courts Act, 2015.

19. The petition is **allowed**.

(SUJOY PAUL)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE