

M/S SCG Contracts India Pvt Ltd v K.S.Chamankar Infrastructure Pvt Ltd¹ (Supreme Court, 12 February 2019)

February 22, 2019

Introduction

1. The Supreme Court of India considered the issue whether the written statement can be filed by a Defendant beyond a period of 120 days as provided under the amended provisions of Order VIII, Rule 1 of the Code of Civil Procedure, 1908 (“CPC”). The Supreme Court held that the said provision is mandatory and that a Defendant will forfeit the right to file a written statement if the same is not filed within the period of 120 days from the date of the service of summons in the suit.

Factual Background

2. A suit was filed by M/S SCG Contracts India Pvt Ltd (“Appellant”) on 10 March 2017 claiming a sum of INR 6,94,63,114/-. K.S. Chamankar Infrastructure Pvt Ltd (“Defendant No.1”) was served with the summons in the suit on 14 July 2017. 120 days from this date leads to 11 November 2017, by which date no written statement was filed before the court.
3. In the meanwhile, Defendant No.1 filed an application for rejection of the plaint under Order VII, Rule 11 of the CPC. This application was rejected on 5 December 2017. Defendant No.1 then sought for a period of seven days to file its written statement. The court granted Defendant No.1 time till 15 December 2017 to file its written statement subject to the payment of costs to the Plaintiff.
4. On 6 August 2018, the Plaintiff filed an application contending that recent amendments to the CPC do not permit filing of the written statement beyond the period 120 days from the date of service of the summons of the suit. By an order dated 24 September 2018, the court held that the order dated 5 December 2017 had attained finality and that since Defendant No.1 had filed its written statement on 15 December 2017 the same should be taken on record.
5. The Appellant accordingly filed Special Leave Petitions before the Supreme Court of India against the orders dated 5 December 2017 and 24 September 2018 respectively.

Issues and Findings

1. At the outset, the Supreme Court noted the amendments to the provisions of the CPC dealing with the filing of a written statement viz the second proviso to Order V, Rule 1 (1)¹, Order VIII, Rules 1²

¹ Order V, Rule 1 (1) of CPC: ...Provided further 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.

² Order VIII, Rule 1 of CPC: ...Provided further 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.

and 10³ introduced by virtue of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“**Commercial Courts Act**”).

2. On a review of the same, the Supreme Court held that ordinarily a written statement is supposed to be filed within a period of 30 days. However, a grace period of a further 90 days is granted within which the written statement can be filed, which the court, may allow for reasons to be recorded in writing and on payment of costs by the defendant. Of pertinent importance is the fact that beyond the 120 days from the date of service of summons, the defendant forfeits the right to file the written statement and Order VIII Rule 1 provides that the court shall not allow the written statement to be taken on record. Order VIII, Rule 10 of the CPC further buttresses this by adding that the court has no further power to extend the time beyond this period of 120 days.
3. The Supreme Court affirmed the decisions of the Delhi High Court in *Oku Tech Pvt Ltd v Sangeet Agarwal & Ors*⁴ and *Maja Cosmetics v Oasis Commercial Pvt Ltd*⁵ which held that provisions of Order VIII Rule 1 of the CPC are mandatory and not merely directory especially in view of the fact that the said rule provides for the consequence of not filing the written statement within the time mentioned.
4. The Supreme Court further held that in view of the decision rendered in *Manohar Lal Chopra v Rai Bhadur Rao Raja Seth Hiralal*.⁶ there was no merit in the contention of Defendant No.1 that the inherent powers of a court under Section 151 of the CPC can be invoked where a procedural provision such as the one governing the filing of a written statement leads to unjust consequences.

ELP COMMENTS

In view of the reasoning adopted by the Supreme Court, defendants must ensure the filing of the written statement within the period of 120 days from the date of service of summons as provided under the provisions of Order VIII, Rule 1 of the CPC to avoid losing this valuable right. Further, as this provision has been interpreted to be mandatory in nature as opposed to merely directory, upon service of summons, the filing of an application for rejection of plaint under Order VII, Rule 11 will not enable a defendant to claim any exclusion of time for failure to file the written statement within the 120 days period.

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³ Order VIII, Rule 10 of CPC: ...Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.

⁴ CS (OS) No. 3390 of 2015-Delhi High Court dated 11 August 2016

⁵ 2018 SCC Online Del 6698

⁶ 1962 Suppl 1 SCR 450