

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****OMP No. 600 of 2023 in COMS No. 7 of 2019****Reserved on 6.5.2026****Date of Decision: 15.5.2026**

Ghevarchand R Jain**.....Applicant/Plaintiff****Versus****M/s Himland Real Estate (P) Ltd. And Ors.****.....Non-applicants/defendants**

Coram**Hon'ble Mr. Justice Sandeep Sharma, Judge.****Whether approved for reporting? Yes.****For the Plaintiff:** Mr. N.K. Sood, Senior Advocate with Mr. Sarthak Mehta, Advocate.**For the Defendants:** Mr. Udit Shaurya Kaushik, Advocate.

Sandeep Sharma, J.

By way of instant application filed under Section 151 of Code of Civil Procedure, prayer has been made by the applicant/plaintiff to close the defence of the non-applicants/defendants on the ground that written statement filed by them after expiry of 120 days from the date of service of summons, cannot be taken on record in terms of provisions contained under Order 8 Rule 1 CPC. It is averred in the application that pursuant to notices issued in the suit, non-applicants/defendants were served on 6.4.2019 and thereafter, they put in appearance before this Court on



8.4.2019. It is submitted that written statement in the present case has been not filed by the non-applicants/defendants within thirty days from the actual date of the service in the suit. Though written statement could be filed by them within a period of next 60 days, but only with the leave of the Court, however, they did not even apply for extension of time for filing the written statement and thus, even after the extension period of 120 days, written statement was not filed by the non-applicants/defendants and as such, there is no legal and valid written statement on record having been filed by the non-applicants/defendants. It is further submitted that after perusal of record, it appears that same was filed on or around 15.3.2021 and even at that time, written statement was not in order, as a result thereof, objections were raised by the Scrutiny Branch of Registry of this Court. It is stated in the application that since written statement was brought on record after lapse of statutory period, same cannot be taken on record. In nutshell, it is averred in the application that since written statement has been not filed within the prescribed period of limitation, therefore, in the eye of law, there is no valid written statement on record and as such, defence of the non-applicants/defendants stands closed in the eyes of law and necessary orders in that regard may be passed by this court.



2. Pursuant to notices issued in the instant application, non-applicants/defendants have filed reply, wherein it is stated that application under Section 151 of CPC is not maintainable and as such, deserves dismissal. It is further stated in the application that written statement filed by the non-applicants/defendants is already on record and on the basis of same, this Court has proceeded to pass appropriate orders on their application under Order 39 Rule 4 CPC and same has also been complied with.

3. It is further stated in the reply that present application has been filed only to delay the proceedings in the suit. While stating that non-applicants/defendants had filed OMP No.189 of 2019 under Order VII Rule 11 (d) CPC, thereby challenging the maintainability of the suit, which was dismissed on 27.8.2019, by this Court and further upheld upto Hon'ble Apex Court vide order dated 5.2.2021 in SLP(C) No. 772 of 2021, it is further averred in the application that written statement was filed in the month of March, 2021 within the statutory period when the paper book of the case was served upon the non-applicants/defendants. While denying that non-applicants/defendants were served much before 8.4.2019, it is stated that written statement was filed by the non-applicants/defendants



within the statutory period, however due to some technicalities, same remained under objections in the Registry of this Court.

4. Mr. N.K. Sood, learned Senior Counsel, duly assisted by Mr. Sarthak Mehta, Advocate, appearing for the applicant/plaintiff, while making this Court peruse provisions contained under Order VIII Rule 1 CPC and Section 16 of the Commercial Courts Act, vehemently argued that no written statement can be permitted to be filed after expiry of 120 days. Mr. Sood, submitted that as per amendment of First Schedule of the Code, in case written statement is not filed within 120 days from the date of service, defendant shall forfeit right to file the same and court shall not allow the written statement to come on record. Mr. Sood further submitted that though inadvertently, in the case at hand, court has taken on record the written statement filed by the non-applicants/defendants after expiry of 120 days, but such fact may not be of much relevance as far as consideration of prayer made by the applicant/plaintiff for rejection of written statement made through instant application is concerned, which otherwise can be only decided strictly in terms of provisions contained under Order VIII Rule 1 CPC and Section 16 of the Commercial Courts Act. He further submitted that though non-applicants/defendants themselves ought to have apprised this Court with regard to their having filed written



statement beyond prescribed period, but even otherwise no benefit can be claimed by them of the fact that their written statement already stands taken on record. Mr. Sood, further submitted that though in routine manner, applicant/plaintiff has filed replication to the written statement, but provision of law clearly provides that after expiry of 120 days from the date of service of summons, defendant shall forfeit his/her right to file the written statement and court shall not allow the written statement to come on record, as such, mere fact that written statement is already on record is of no consequence, rather prayer made by the applicant/plaintiff through instant application deserves to be allowed.

5. In support of his afore contention, Mr. Sood, placed reliance upon judgment passed by the Hon'ble Apex Court in **M/S SCG Contracts India Pvt. Ltd. Vs. K. S. Chamankar Infrastructure Pvt. Ltd. and Ors., (2019) 12 SCC 210**, wherein Hon'ble Apex Court has held that clear, definite and mandatory provisions of Order V Rule 1 read with Order VIII Rule 1 and 10 CPC (as amended for suits relating to commercial disputes of specified value by Act 4 of 2016) cannot be circumvented by recourse to the inherent power under Section 151 CPC to do the opposite of what has been stated therein.



6. To the contrary, Mr. Udit Shourya Kaushik, Advocate, appearing for the non-applicants/defendants, while praying for dismissal of the application at hand, attempted to argue that once written statement which is claimed to have been filed beyond the prescribed period of 120 days, has been taken on record by this Court and applicant/plaintiff has already filed the replication to the same, prayer made by the applicant/plaintiff to close the defence of the defendants, deserves outright rejection being totally meritless. Mr. Kaushik, further submitted that though written statement was filed within the stipulated period, but since there were certain objections, same could not be taken on record. He further submitted that once applicant/plaintiff has already filed replication, they have virtually acquiesced and waived their statutory right by their implied conduct. To support his afore argument, Mr. Kaushik placed reliance upon judgment passed by the Hon'ble Apex Court in **Arce Polymers Private Limited v. Alphine Pharmaceuticals Private Limited, 2022 (2) SCC 221**, wherein it came to be ruled that statutory right may be waived by implied conduct, like, by wanting to take a chance of favourable decision.

7. I have heard the learned counsel for the parties and gone through the records of the case.



8. Precisely, question which needs to be determined in the case at hand is *whether written statement filed beyond prescribed period of 120 days in a commercial suit filed under Commercial Courts Act can be taken on record and whether applicant/plaintiff can be permitted to seek closure of the defence of the non-applicants/defendants on the ground that written statement has been filed beyond prescribed period of 120 days, especially when he or she has filed replication to the same.*

9. It is not in dispute that instant application for closing the defence of the non-applicants/defendants has been filed in a Commercial Suit under the Commercial Courts Act. It is also not in dispute that commercial division or commercial court is required to follow Code of Civil Procedure, 1908, as amended by Commercial Courts Act 2015 in the trial or suit in respect of commercial suits of a specified value.

10. Order V Rule 1 CPC, Order VIII Rule 1 CPC and Section 16 of the Commercial Courts Act, are very much relevant for adjudication of the case at hand, which read as under:

“Order V Rule 1 CPC

1. Summons.— [(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant: Provided that no such summons shall be issued when a defendant



has appeared at the presentation of plaint and admitted the plaintiff's claim:

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 same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.] *

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) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Special Amendment

"Commercial dispute of a Specified Value.- In its application to any suit in respect of a commercial dispute of a Specified Value, in Orer V, in rule1, in sub-rule(1), for the second Proviso, substitute the following proviso, namely:-

“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, 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.”

“Order VIII Rule 1

1. **Written Statement.**—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Special Amendment

Commercial dispute of a Specified Value.- In its application to any suit in respect of a commercial dispute of a Specified Value, in Order VIII, in rule 1, substitute the following proviso, namely:-

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.”

“Section 16 of the Commercial Courts Act, 2015

16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as



amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

11. Order V Rule 1 CPC, which deals with issuance of summons in a suit, clearly provides that written statement of defence by the defendant, if any, is required to be filed within 30 days from the date of service of summons on the defendant. Proviso to aforesaid provision of law further reveals that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

12. Similarly, Order VIII Rule 1 CPC provides for filing of written statement by the defendant within 30 days from the date of service of summons on him/her. Proviso to aforesaid provision of law also suggests that court, for the reasons to be recorded in writing, may extend time by 90 days, but in any eventuality, no time more than 120 days from the date of receipt of summons can be granted.



13. As has been observed herein above, Section 16 of the Commercial Courts Act, clearly provides that the provisions of the Code of Civil Procedure shall apply to the Commercial Suit filed under Commercial Courts Act. Vide Act 4 of 2016, Section 16 and Schedule-4 (d) (i) (w.e.f. 23.10.2015), special amendment came to be made, as has been reproduced herein above, wherein it came to be ruled that special amendment has been made in Order VIII Rule 1 CPC in its application to any suit in respect of a commercial dispute of a specified value, wherein it has been clearly provided that where the defendant fails to file written statement within said period of 30 days, he/she shall be allowed to file written statement on such other day as may be specified by the court for the reasons to be recorded in writing, but which shall not be later than 120 days from the date of service of summons and after expiry of 120 days from the date of service of summons, defendants shall forfeit right to file the written statement and court shall not allow the written statement to come on record.

14. Now being guided by aforesaid provisions of law, this Court would make an endeavour to ascertain the correctness of claim put forth by the plaintiff for closure of defence of the non-applicants/defendants vis-a-vis factual matrix of the case.



15. Though Mr. Udit Kaushik, learned counsel, representing the non-applicants/defendants, attempted to argue that non-applicants/defendants were not served much before 8.4.2019 as is being claimed by the applicant/plaintiff, but record reveals that on 8.4.2019, Mr. J.L. Bhardwaj, Advocate, who has now been elevated as Hon'ble Judge of this Court, had put in appearance on their behalf and on his request, four weeks' time was granted to file reply to OMP No. 73 of 2019. Though afore order nowhere suggests that time was either prayed for or granted for filing written statement, but admittedly, it stands duly established from afore order that non-applicants/defendants stood served on afore date, meaning thereby, they ought to have filed written statement on or before 8.5.2019, which admittedly was not filed within the afore period. Though time, in terms of aforesaid provisions of law as, could be further extended on the application made by the defendants upto 120 days, but record nowhere reveals that application, if any, for extension of time was filed. Written statement which otherwise has been taken on record clearly reveals that same was filed on 15.3.2021, i.e. after approximate delay of one year 10 months and seven days. Though written statement was filed on afore date, but same remained under objections for a long time as is evident from the case file.



16. This Court finds from the record that though no specific time was granted by this Court to the applicant/plaintiff to file replication, but it appears that plaintiff after having received written statement also filed replication and in between, applications under Order VII Rule 11 CPC as well as under Order XXXIV Rule 4 CPC came to be filed at the behest of the defendants, however same were dismissed by this Court vide order dated 27.8.2019 passed in OMP No. 189 of 2019 and order dated 27.5.2024 passed in OMP NO. 187 of 2023, which have attained finality. After disposal of the afore applications, instant application came to be filed by the applicant/plaintiff for striking of the written statement/defence of the non-applicants/defendants on the ground that same was filed beyond prescribed period of 120 days. Admittedly, written statement in the case at hand, has been filed beyond prescribed period of 120 days as has been detailed herein above.

17. As per provisions contained under Order V Rule 1 CPC and Order VIII Rule 1 CPC read with amendment carried in Order VIII Rule 1 CPC in context of Commercial Courts Act, no written statement, as has been noticed herein above, can be permitted to be filed beyond prescribed period of 120 days. Vide Act 4 of Section 16 and Schedule 4 (d), special amendment came to be carried out qua the applicability of Order VIII Rule



1 CPC, to any suit in respect of commercial suit of specified value, wherein it came to be specifically provided that where defendant fails to file the written statement within 120 days from the date of service, he/she shall be allowed to file the same on such other day as may be specified by the court, but not later than 120 days from the date of service of summons and thereafter, on the expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file written statement and court shall not allow the written statement to be taken on record.

18. In the case at hand, though written statement has been admittedly filed beyond 120 days from the date of service of summons, but same has been taken on record, to which, plaintiff has also filed replication. Though having taken note of the provisions of law as detailed herein above, this Court is fully convinced that written statement filed by the non-applicants/defendants beyond prescribed period of 120 days could not have been taken on record, but now question which remains to be decided is *“whether failure, if any, on the part of the applicant/plaintiff to raise objection qua filing of the written statement at the relevant time coupled with the fact that plaintiff also proceeded to file replication to the written statement could be a reasonable ground for this court to permit the non-*



applicants/defendants to file written statement beyond prescribed period of 120 days or not?"

19. At this stage, it would be apt to take note of judgment passed by the Hon'ble Apex Court in **K.S. Chamankar Infrastructure Pvt. Ltd.** (supra), wherein it has been ruled that mandatory provision of Order V Rule 1 read with Order VIII Rules 1 and 10 CPC, cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein. In the case before the Hon'ble Apex Court, learned Single Judge of this High Court had taken the written statement, which was filed beyond period of 120 days, on record. In the case before Hon'ble Apex Court, admittedly written statement was not filed within 120 days from the date of service of summons. Before filing of written statement, defendants filed application under Order VII Rule 11 CPC for rejection of the plaint, however, same was rejected. After rejection of aforesaid application, learned Single Judge recorded that none appeared for the plaintiff in spite of the advance copies stated to have been given and time was granted to the defendants to file written statement. Since written statement was filed beyond prescribed period of 120 days, plaintiff filed application for striking of the defence of the defendants, averring therein that recent changes that have been made in the CPC were not adhered to,



as a result thereof, written statement, which is yet to be taken on record, could not be taken on record in view of the fact that 120 days had elapsed from the date of service of summons of the suit, however, such application of the non-applicants/defendants was dismissed making reference of order dated 5.12.2017, whereby time was granted to file written statement. Afore order was laid challenge before the Hon'ble Apex Court in the case titled herein above. Hon'ble Apex Court taking note of provisions contained under Order V Rule 1 CPC and Order VIII Rule 1 CPC held that liberty to file an application for rejection under Order VII Rule 1 CPC cannot be made as recourse/ruse for retrieving the lost opportunity to file written statement, which can only be filed within prescribed period of 120 days. Relevant paras of judgment passed in **K.S. Chamankar Infrastructure Pvt. Ltd.** (supra), reads as under:

“8) The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

“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 days, 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 and 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.”

Equally, in Order VIII Rule 1, a new proviso was substituted as follows:

“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 and twenty days from the date of service of summons and on expiry of one hundred and 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.”

This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:-

“10. **Procedure when party fails to present written statement called for by Court-** Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the



suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up.

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.”

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 further 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 further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

9. In Bihar Rajya Bhumi Vikas Bank Samiti (supra), a question was raised as to whether Section 34(5) of the Arbitration and Conciliation Act, 1996, inserted by Amending Act 3 of 2016 is mandatory or directory. In para 11 of the said judgment, this Court referred to Kailash vs. Nanhku, (2005) 4 SCC 480 referring to the text of Order 8 Rule 1 as it stood pre the amendment made by the Commercial Courts Act. It also referred to the Salem Advocate Bar Association vs. Union of India, (2005) 6 SCC 344, which, like the Kailash judgment, held that the mere expression “shall” in Order 8 Rule 1 would not make the provision mandatory. This Court then went on to discuss in para 17 State vs. N.S. Gnaneswaran, (2013) 3 SCC 594 in which Section 154(2) of the Code of Criminal Procedure was held to be



directory inasmuch as no consequence was provided if the Section was breached. In para 22 by way of contrast to Section 34, Section 29-A of the Arbitration Act was set out. This Court then noted in para 23 as under:

“23. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences.”

10. Several High Court judgments on the amended Order VIII Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. [See Oku Tech Private Limited vs. Sangeet Agarwal & Ors. by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other judgments including a judgment of the Delhi High Court in Maja Cosmetics vs. Oasis Commercial Pvt. Ltd. 2018 SCC Online Del 6698.

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier



law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.

12. However, learned counsel appearing for the respondents relied strongly upon the judgment in Bhanu Kumar Jain (supra) and Shaikh Salim Haji Abdul Khayumsab (supra) and, in particular, paras 22 and 27 of the first judgment and paras 4 & 19 of the second judgment.

13. We are of the view that since both these judgments dealt with the pre-amendment position, they would not be of any direct reliance insofar as the facts of the present case is concerned.

14. Learned counsel appearing for the respondents also relied upon R.K. Roja vs. U.S. Rayudu and Another (supra) for the proposition that the defendant is entitled to file an application for rejection of plaint under Order VII Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order VII Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records

“However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement”.

15) Learned counsel appearing for the respondents then argued that it cannot be assumed that the learned Single Judge did not know about these amendments when he passed the first impugned order dated 05.12.2017. We do not wish to enter upon this speculative arena. He then argued that since this judgment permitted him to file



the written statement beyond 120 days, it was an act of the Court which should prejudice no man. This doctrine cannot be used when the **res is not yet judicata**. The 05.12.2017 order is **res sub judice** inasmuch as its correctness has been challenged before us.

20. It is quite apparent from the aforesaid exposition of law that provisions contained in under Order V Rule 1 CPC read with Order VIII Rule 1 CPC are mandatory and court has no power to extend time beyond 120 days as far as filing of written statement is concerned.

21. Section 16 of Chapter VI of the Commercial Courts Act takes note of amendments to the provisions of Code of Civil Procedure. Section 16(1), which provides that provisions of the Code of Civil Procedure, 1908 shall have their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule. Amendment of First Schedule has been carried out, wherein Order V Rule 1 CPC and sub rule 1 of the second proviso, special proviso has been substituted as has been taken note herein above, providing therein that in case defendant fails to file written statement within a period of 30 days, he shall be allowed to file the same, on such other day as may be specified by the Court, but same shall not be later than 120 days from the date of service of summons and on expiry of 120 days from the date of service, defendants shall forfeit right to file the written statement and



thereafter, court shall not allow the written statement to be taken on record. Aforesaid provision of law clearly provides for the forfeiture of right of the defendant to file written statement beyond 120 days, meaning thereby, in no eventuality, written statement, if any, filed beyond prescribed period of 120 days cannot be taken on record.

22. True it is that in the case at hand, written statement stands filed and taken on record, but careful perusal of day-to-day orders, nowhere suggests that specific order, if any, was passed by Court, thereby permitting the non-applicants/defendants to file written statement beyond prescribed period of 120 days as well as for filing replication as has been filed in the case at hand, by the applicant/plaintiff to the written statement of the non-applicants/defendants. Even if it is presumed that this court was in the know of the fact that written statement has been filed beyond prescribed period of 120 days coupled with the fact that applicant/plaintiff also filed replication to the same, such fact may not be of much relevance in view of the specific provisions contained in the Order V Rule 1 CPC read with Order VIII Rule 1 CPC and Section 16 of the Commercial Courts Act, which clearly provide that in no eventuality, written statement filed beyond prescribed period of 120 days shall be taken on record, rather in that case, defendants shall forfeit right to file the written statement and court shall



not allow the written statement to come on record. Hence, in view of the aforesaid, prayer made by the applicant/plaintiff through instant application, deserves to be allowed.

23. At this stage, it is also necessary to take note of judgment passed in **Arce Polymers Private Limited** (supra), which has been pressed into service by Mr. Udit Shaurya Kaushik, learned counsel appearing for the non-applicants/defendants, wherein it has been ruled that statutory right may be waived by way of implied conduct. While referring to aforesaid provision of law, Mr. Kaushik attempted to argue that closure of defence, if filed after prescribed period of 120 days, is a statutory right of the plaintiff, but since same stands waived off by the applicant/plaintiff on account of his filing replication, prayer made by the applicant/plaintiff through instant application deserves rejection, however having carefully perused aforesaid judgment, this Court is not persuaded to agree with Mr. Kaushik, for the reason that facts of the afore case decided by the Hon'ble Apex Court were totally different and findings returned therein are totally on altogether different context. In the afore proceedings, borrower under SARFAESI Act 2002, not only objected to auction of secured property by the bank, but it by express and deliberate conduct asked the bank to compromise the position and alter the contractual terms. Borrower repeatedly requested



the bank for restructuring of loans, which prayer of his was considered by the bank by giving indulgence time and again. Auction of subject property was delayed by more than a year at the behest of the borrower. In afore background, Hon'ble Apex Court considering facts of the case which reflected its ingenuous conduct on the part of the borrower to gain indulgence unfulfilled assurance, promises and their unwillingness to pay held that borrower had waived and was stopped from challenging violation of Section 13 (3A). Relevant paras of afore judgment reads as under:

“16. Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration.

17. It is correct that waiver being an intentional relinquishment is not to be inferred by mere failure to take action, but the present case is of repeated positive acts post the notices under Sections 13(2) and (4) of the SARFAESI Act. Not only did the Borrower not question or object to the action of the Bank, but it by express and deliberate conduct had asked the Bank to compromise its position and alter the contractual terms. The Borrower wrote repeated request letters for restructuring of loans, which prayers were considered by the Bank



by giving indulgence, time and opportunities. The Borrower, aware and conscious of its rights, chose to abandon the statutory claim and took its chance and even procured favourable decisions. Even if we are to assume that the Borrower did not waive the remedy, its conduct had put the Bank in a position where they have lost time, and suffered on account of delay and laches, which aspects are material. Action on the Subject Property was delayed by more than a year as at the behest of the Borrower, the Bank gave them a long rope to regularise the account. To ignore the conduct of the Borrower would not be reasonable to the Bank once third party rights have been created. In this background, the principle of equitable estoppel as a rule of evidence bars the Borrower from complaining of violation. 19. Similarly, in *S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra and Others* 1980 Supp SCC 53, the argument that the requirement of Section 94 of the Representation of Peoples Act, 1951 cannot be waived was rejected observing that a privilege conferred or a right created by a statute, if it is solely for the benefit of a party, the said party can waive it. However, where a provision enacted is founded on public policy, the courts would be slow to apply the doctrine of waiver. The doctrine applies in the first situation as the right to waive inheres in the concept of personal privilege and right.

24. In the afore case, Hon'ble Apex Court held that privilege conferred or a right created by the statute if it is solely for the benefit of a party, the said party can waive it, however, where a provision enacted is founded on public policy, the courts would be slow to apply the doctrine of waiver. The doctrine applies in the first situation as the right to waive inheres the concept of personal privilege and right. Though aforesaid



judgment is not applicable in the given facts and circumstances of the case, but having taken note of specific provisions contained Order V Rule 1 CPC, Order VIII Rule 1 CPC and Section 16 of the Commercial Courts Act, there is no question of acquiescence and waiver, if any, at the behest of the applicant/plaintiff, rather non-applicants/defendants on their failure to file written statement within a prescribed period of 120 days have forfeited their right to file written statement in the case at hand.

25. Consequently, in view of the detailed discussion as well as law taken into consideration, this Court finds merit in the present application and accordingly, same is allowed, as a consequence of which, defence of the defendants is closed and it is ordered that written statement taken on record as well as replication thereto shall not be read and taken into consideration in the instant suit. In the aforesaid terms present application is disposed of.

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26. On the joint request of learned counsel for the parties, list on 3.8.2026

May 15, 2026

(Manjit)

**(Sandeep Sharma),
Judge**