HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2025

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BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 34745 OF 2024 (GM-CPC)

BETWEEN:

1. M/S. IMAGEX TECHNOLOGIES INDIA PVT. LTD.,
R/O 45/B, 4TH FLOOR, 1ST MAIN
MINI FOREST ROAD, SARAKKI INDUSTRIAL LAYOUT
JP NAGAR 3RD PHASE, BENGALURU – 560 078
REPRESENT BY
DIRECTOR SRI PRASANNA KULKARNI

AND ALSO AT: PLOT NO.Q-21C, 2ND MAIN
KSSIDC INDUSTRIAL ESTATE
2ND STAGE, JIGANI, ANEKAL TALUK
BENGALURU – 560 105
(A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 2013).

2. MR. PRASANNA KULKARNI
AGED ABOUT 61 YEARS
DIRECTOR OF M/S. IMAGEX TECHNOLOGIES
INDIA PRIVATE LIMITED
R/O 45/B, 4TH FLOOR, 1ST MAIN
MINI FOREST ROAD, JP NAGAR 3RD PHASE
SARAKKI INDUSTRIAL LAYOUT
BENGALURU – 560 078.

AND ALSO AT:
PLOT NO.Q-21C, 2ND MAIN
KSSIDC INDUSTRIAL ESTATE

2ND STAGE, JIGANI, ANEKAL TALUK
BENGALURU – 560 105.

…PETITIONERS

(BY SRI G.S.VENKAT SUBBARAO, ADVOCATE)

AND:

1. M/S. GRAINTEC INDUSTRIES
R/O SURVEY NO.101, KACHOHALLI
LAKSHMIPURA POST, DASANAPURA HOBLI
BENGALURU – 560 091.
REPRESENTED BY ITS MANAGING PARTNER
SRI K.R.PRASANNA KUMAR
A FIRM REGISTERED UNDER
THE INDIAN PARTNERSHIP ACT, 1932)

2. MR. B.SURESH
DIRECTOR OF M/S. IMAGEX TECHNOLOGIES
INDIA PRIVATE LIMITED
R/O 45/B, 4TH FLOOR, 1ST MAIN
MINI FOREST ROAD
SARAKKI INDUSTRIAL LAYOUT
JP NAGAR 3RD PHASE, BENGALURU – 560 078.

AND ALSO AT:
PLOT NO.Q-21C, 2ND MAIN, KSSIDC INDUSTRIAL
ESTATE, 2ND STAGE, JIGANI, ANEKAL TALUK
BENGALURU – 560 105.

…RESPONDENTS

(BY SRI SAGAR S. S., ADVOCATE FOR
SRI SATEESH CHANDRA K. V., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD. 19.10.2024 IN COMMERCIAL O.S.NO. 65/2024 PENDING ON THE FILE OF X ADDITIONAL DISTRICT AND

SESSIONS JUDGE (DEDICATED COMMERCIAL COURT) BENGALURU RURAL DISTRICT, BENGALURU VIDE ANNX-A AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioners who are defendants 1 and 2 call in question an order dated 19th October, 2024 passed by the X Additional District and Sessions Judge (Dedicated Commercial Court), Bengaluru Rural District, Bengaluru, on I.A.No.III in Commercial O.S.No.65 of 2024, rejecting the written statement filed by the petitioners / defendants, on the score that it is beyond the period of limitation prescribed under Order VIII Rule 1 read with Section 151 of the CPC and Section 5 of the Limitation Act.

2. Heard Sri G.S. Venkat Subbarao, learned counsel appearing for the petitioners and Sri S.S. Sagar, learned counsel appearing for the respondents.

3. Facts, in brief, germane are as follows: -

The 1st respondent/plaintiff institutes a commercial suit in Commercial O.S.No.65 of 2024 against the petitioners for recovery of money of ₹23,97,327/-. The suit is filed on 01.02.2024. On 17-02-2024, the petitioners are served with suit summons. The petitioners appear before the concerned Court and seek leave to engage a counsel on 06-03-2024. On 03-04-2024, learned counsel appears and seeks time to file written statement. It is the case of the petitioners that in order to file written statement, procuring documents becomes a time consuming factor and owing to the fact that limitation for filing written statement was nearing, they filed an application under Sections 148 r/w. 151 of the CPC seeking extension of time. This is preferred on 30-05-2024. The said application comes to be allowed with costs. Later, the petitioners file an application in I.A.No.III and seek leave to file the written statement by condoning the delay. The petitioners also set up a counter claim. On 01-08-2024, the plaintiff files his objections to I.A.No.III. The concerned Court in terms of the order impugned dated 19-10-2024 rejects the application - I.A.No.III and thus, filing of written statement comes to be rejected.

Therefore, the petitioners are before this Court in the present petition.

4. The learned counsel appearing for the petitioners Sri G.S.Venkat Subbarao would contend that the limitation prescribed under the statute though is 30 days, it is extendable upto 120 days and if an application is preferred prior to the expiry of 120 days seeking extension of time, the Court must consider the application and extend time. He would submit that the procedural right should be flexible so that the claims of the litigants would not be defeated. He would seek to place reliance upon the judgment of the Apex Court in the case of **PRAKASH CORPORATES v. DEE VEE PROJECTS LIMITED** reported in **(2022) 5 SCC 112** to buttress his submission with regard to procedural flexibility and permission to file the written statement beyond the period of limitation.

5. *Per contra,* the learned counsel representing the respondents would contend that the statute clearly bars any time to be granted beyond 120 days. Admittedly, the petitioners are wanting to file their written statement after 137 days of service of summons on them. He would, therefore,

contend that if any leniency is shown at the hands of this Court, it would be at the cost of an order violating the statute. He would seek dismissal of the petition on the score that there is nothing wrong in the order passed by the concerned Court.

6. The learned counsel for the petitioners would join issue in contending that the delay as observed by the concerned Court is not 137 days but is only 17 days and since the application is filed before expiry of 120 days, the Court should have recorded reasons for rejecting the claim. He would therefore contend that this Court may remit the matter back to the concerned Court to consider afresh.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The link in the chain of events is a matter of record. The issue is, whether the order of the concerned Court rejecting the application filed by the defendants is tenable or otherwise.

9. The application is filed under Order VIII Rule 1 read with Section 151 of the CPC. Order VIII Rule 1 of the CPC reads as follows:

> "**ORDER VIII**
> [WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM]
>
> **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 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."**
>
> (Emphasis supplied)

The afore-quoted statutory command is directory nor permissive. It clothes the Court with discretionary, yes, but one hemmed within the fixed contour of 120 days, beyond that threshold, the right of the defendant to file the written statement stands statutorily extinguished and no interpretative generosity can rekindle it.

10. The summons in the case at hand is admittedly served upon the petitioners on 17-02-2024. The petitioners appear before the Court on 06-03-3024 and the learned counsel for defendants sought time to file written statement on 03-04-2024, but filed it only on 04-07-2024, long after the period of 120 days is over. The written statement is sought to be filed along with counter claim on the 137th day from the date of service of summons and 17 days from the date of expiry of 120 days. Therefore, viewed from any angle, there is delay in filing the written statement. The statute clearly mandates maximum permissible limit that a Court can extend time on reasons to be recorded in writing in exceptional circumstances only upto 120 days. Admittedly, the period of limitation on the date of filing of the written statement has expired. Therefore, no fault can be found with the order passed by the concerned Court declining to accept the written statement.

11. The judgment on which the learned counsel for the petitioners has placed reliance would not lend him any support.

The paragraph that he relies upon is 39 of the judgment in the case of **PRAKASH CORPORATES** *supra*. It reads as follows:

> **"Another error of procedure by the trial court**
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> **39.** Apart from the above, yet another significant feature is that on the very first day of appearance i.e. on 18-1-2021, the appellant moved an application under Section 10 read with Section 151 CPC for stay of the suit proceedings on the ground that proceedings between the parties relating to the subject-matter of the suit were pending before NCLT. The respondent had earlier moved an application seeking directions of attachment before judgment in terms of Order 38 CPC. Both the applications as moved by the appellant as also by the respondent remained pending and, on 15-3-2021, the trial court adjourned the matter to 15-4-2021 for arguments on both these applications. On 15-4-2021, no business could be transacted and the matter was adjourned to 22-6-2021, again for arguments on these applications. Even when the matter was taken up on 22-6-2021 and the trial court declined the prayer of the appellant for another opportunity for filing the written statement, it did not take up the said applications for consideration and adjourned the matter to 9-7-2021.
>
> **39.1.** We are not commenting on merits of the application moved by the appellant under Section 10 CPC but, it cannot be gainsaid that such an application, by its very nature, required immediate consideration and before any other steps in the suit. **It needs hardly any emphasis that if the prayer made in the application moved under Section 10 were to be granted, the trial of the subject suit was not to be proceeded with at all. We find it rather intriguing that on one hand, the trial court itself posted the matter for consideration of that application along with the other application moved by the respondent but did**

not take them up on 22-6-2021 and adjourned the matter after declining the prayer for filing written statement. Even when the trial court considered the step of filing the written statement to be of importance in view of the time-limit and consequences stated in the statute, there was no justification that the trial court did not simultaneously take up the application under Section 10CPC for consideration.

39.2. We are constrained to reiterate the unquestionable principles that the rules of procedure are essentially intended to subserve the cause of justice and are not for punishment of the parties in conduct of the proceedings. Of course, in the ordinary circumstances, the mandates of Rule 1(1) of Order 5, Rule 1 of Order 8 as also Rule 10 of Order 8, as applicable to the commercial dispute of a specified value, do operate in the manner that after expiry of 120th day from the date of service of summons, the defendant forfeits the right to submit his written statement and the Court cannot allow the same to be taken on record but, these provisions are intended to provide the consequences in relation to a defendant who omits to perform his part in progress of the suit as envisaged by the rules of procedure and are not intended to override all other provisions of CPC like those of Section 10. These comments are necessitated for the reason that the trial court seems to have simply ignored the requirements of dealing with the pending applications with requisite expedition. We say no more.

(Emphasis supplied)

The Apex Court no doubt elucidates the procedural flexibility. It does nowhere dilute the legislative mandate, that in

commercial disputes, the sanctity of timelines need not be observed. Thus the reliance placed upon the afore-quoted judgment in the context of the case, is misplaced.

12. Taking cue from the said observation, the learned counsel for the petitioners putforth the submission that if the defendants have filed an application seeking extension of time before the expiry of 120 days, it should be answered and accepted. The said submission, to say the least, is **preposterous**. As an illustration, if the defendant who has not filed the written statement in a commercial O.S., files an application on the 119th day and seeks time, no Court including this Court cannot extend the mandate of the statute *qua* the limitation in filing the written statement. Therefore, the submission is noted only to be rejected. The judgment relied upon would not assist to contend that the limitation of 120 days should be extended by a stroke of pen at the hands of this Court. Any other view would be to stretch procedural equity to the point of legislative subversion, *qua* commercial disputes. In view of the forgoing, this Court finds no legal infirmity, no procedural aberration or any trace of perversity in the

impugned order. The writ petition being devoid of merit, stands rejected.

Sd/-
(M.NAGAPRASANNA)
JUDGE

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