IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3514 OF 2026

I K Marine Agencies Pvt. Ltd. ... Petitioner
versus
Tata Steel Ltd. … Respondent

WITH
WRIT PETITION NO.11322 OF 2025

Gateway Distriparks Ltd. … Petitioner
versus
Tata Steel Ltd. and Ors. … Respondents

Mr. Vaibhav Ugle i/by Mr. Vikas Somawanshi, Mr. Prashant Mahajan, Mr. Aditya Shinde, Ms. Kalpana Pandey, for Petitioner in WP No.3514 of 2026.
Mr. Mangesh M. Patel for the Petitioner in WP No.11322 of 2025.
Mr. Bhushan Deshmukh with Mr. H.N.Vakil, Mr. Samkit Shah, Mr. Farhad Vakil i/by Mull and Mulla and Craigie Blunt and Caroe, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 6 APRIL 2026
PRONOUNCED ON : 28 APRIL 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. These Petitions under Article 227 of the Constitution of India, take exception to a common order dated 25 July 2025 passed by the learned District Judge, presiding over the Commercial Court at Panvel, whereby the applications (Exh.22 and 24) filed by the Respondent – Plaintiff for taking off the written statements filed by Defendant Nos.1 and 2 – Petitioners in the

respective Petitions, came to be allowed and the written statements (Exhs. 18 and 19) filed by Defendant Nos.1 and 2, respectively, were ordered to be taken off the record.

3. The Petitions arise in the backdrop of the following facts :

3.1 Respondent – Plaintiff is a company incorporated under the provisions of the Companies Act, 1882. Defendant No.1 is a shipping Company. Defendant No.2 is engaged in the business of providing logistic related services in the shipping industry. The Respondent claimed that it had granted licence to Defendant No.1 to use the land and stockyard near Bima Complex, Kalamboli, Navi Mumbai (the suit property). Defendant No.1 inducted Defendant No.2 as a co-licencee.

3.2 In the wake of the disputes, the Respondent instituted a Commercial Suit seeking recovery of various amounts due and payable by the Defendants, jointly and severally, to the Plaintiff towards the statutory, utility and other charges. It was claimed that, certain amounts were payable by the Defendants individually.

3.3 As summons could not be served on 10 May 2024, the Plaintiff made an application for service of summons through registered post. The Plaintiff claims, the writ of summons was served on Defendant No.1 by registered post on 3 August 2024. Whereas, the summons was served on Defendant No.2 on 24 July 2024. The summons was also served on Defendant No.2 by

the Bailiff on 21 August 2024. Defendant Nos.1 and 2 appeared before the Commercial Court on 29 August 2024.

3.4 Defendant No.1 filed an application seeking time for filing written statement. Defendant No.2 did not file any application. Suit stood adjourned to 26 September 2024. On that day, both Defendant Nos.1 and 2 filed applications seeking further time to file written statement.

3.5 The learned Judge was persuaded to grant time. It appears, thereafter, Defendant Nos.1 and 2 did not file applications seeking further time to file written statement, and, eventually, on 16 December 2024 both Defendant Nos.1 and 2 filed their respective written statements. Those written statements were taken on record.

3.6 The Respondent – Plaintiff filed applications (Exhs.22 and 24) seeking directions to take the written statements off the record and proceed with the suit ex-parte as the written statements were not filed within the statutory period.

3.7 The Petitioners resisted the applications.

3.8 By the impugned common order, learned District Judge was persuaded to allow the applications and take the written statements off the record. Learned District Judge was of the view that the summons could be deemed to have been served on Defendant No.1 on 29 August 2024. Qua Defendant No.2, there was ample material to show the service of the writ of summons.

Since Defendant Nos.1 and 2 did not seek further time to file written statement after 26 September 2024, and the Court had not extended the time to file the written statements by passing specific orders, the written statements were required to be taken off the record.

3.9 Being aggrieved, Defendant Nos.1 and 2 have invoked the writ jurisdiction.

4. Affidavits in reply have been filed by the Respondent – Plaintiff in opposition to the prayers in the Petitions.

5. I have heard Mr. Mangesh Patel, the learned Counsel for the Petitioner – Defendant No.2 in WP No.11322 of 2025, Mr. Vaibhav Ugle, the learned Counsel for the Petitioner – Defendant No.1 in WP No.3514 of 2026 and Mr. Bhushan Deshmukh, learned Counsel for the Respondent – Plaintiff, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record, including the reports which purportedly evidenced the service of the summons on Defendant Nos.1 and 2.

6. Mr. Ugle, learned Counsel for the Petitioner – Defendant No.1, would submit that, the findings recorded by the learned District Judge are evidently contradictory. Learned District Judge has recorded a categorical finding that there was no cogent material to show that the writ of summons was served on Defendant No.1 on 3 August 2024, as was sought to be canvassed on behalf of the Plaintiff, and the summons can be deemed to have been served on

Defendant No.1 on 29 August 2024, the date the Defendant No.1 appeared before the Court. Yet the filing of the written statement on 16 Deceased 2024 was erroneously construed as beyond the period of 120 days.

7. Secondly, Mr. Ugle would urge, the learned District Judge lost sight of the fact that, on 26 September 2024 Defendant No.1 had sought further time to file written statement by filing application (Exh.16) ascribing justifiable reasons and the said application was allowed. Thereafter, on the successive dates, the learned District Judge who presided over the Commercial Court was not available and, eventually, written statement was filed on 16 December 2024. Thus, filing of the written statement was well within the period of 120 days from the date of the service of the writ of summons. Learned District Judge was, thus, clearly in error in discarding the written statement filed by Defendant No.1 which was duly taken on record. Grave prejudice would entail if the suit proceeds without written statement of Defendant No.1 and, in effect, without providing an efficacious opportunity of hearing, submitted Mr. Ugle.

8. Mr. Patel, learned Counsel for the Petitioner – Defendant No.2 submitted that the learned District Judge committed a manifest error in law in observing that there was ample material to show that the summons was duly served on Defendant No.2 on the basis of the postal article tracking report, in the face of the report of the Bailiff that the summons was served on 21 August

2024. In the process, learned District Judge lost sight of the fact that the claim of service of writ of summons by registered post was tenuous. No affidavit of service was filed in contradistinction to the affidavit sworn by the Bailiff of due service of summons on 21 August 2024.

9. Mr. Patel would further urge that the summons could not have been served by registered post, in view of the deletion of Rule 19-A of Order V of the Code of Civil Procedure, 1908. Even otherwise, it was a specific stand of the Defendant No.2 that the plaint and the copies of the documents annexed to the plaint were not served on Defendant No.2. Postal receipt indicates that the weight of the article allegedly sent by registered post was 110 gms. only. In the face of the voluminous pleadings and the documents annexed to the plaint, the weight of the postal article would have been much higher, had the plaint and the documents annexed thereto, were also dispatched along with the summons.

10. To lend support to the submission that the Code of Civil Procedure, contemplates service of summons accompanied by a copy of the plaint and in the absence thereof, the summons cannot be said to have been duly served, Mr. Patel placed reliance on a judgment of the Supreme Court in the case of **Nahar Enterprises v/s. Hyderabad Allwys Ltd. and Anr.**[1].

11. Mr. Patel further urged that, if the summons is reckoned to have been

1 (2007) 9 SCC 466

served on Defendant No.2 on 21 August 2024, as is explicitly clear from the record, filing of the written statement on 16 December 2024, was well within the stipulated period of 120 days. In a casual and convulated manner, Mr. Patel would urge, the learned District Judge has recorded a finding that the filing of the written statement was beyond 120 days.

12. It was further submitted that the claim of the Respondent that the Defendants had not sought extension of time to file written statement was also against the weight of the material on record. On 26 September 2024, Defendant No.2 had sought extension of time, which was duly granted. Thereafter, on successive dates, the Presiding Officer was not available. Thus, the learned District Judge committed a grave error in holding that Defendant No.2 had not sought extension of time and the Commercial Court had not extended the time to file the written staement.

13. In opposition to this, Mr. Deshmukh, learned Counsel for the Respondent – Plaintiff would submit that the impugned common order which records elaborate reasons in support the directions to take written statements off the record, does not warrant interference in exercise of the supervisory jurisdiction. It was submitted that, in view of the amendment to the provisions contained in Order V and VIII of the Code, 1908, in its application to the Commercial Courts, under no circumstances, a defendant can be permitted to file written statement beyond 120 days. If the written statement is allowed to

be filed beyond the said period, erroneously or otherwise, the same is required to be taken off the record.

14. To emphasise the mandatory character of the timeline prescribed in the Code for filing the written statement in a Commercial Suit governed by the Commercial Courts Act, 2015, Mr. Deshmukh placed reliance on the decision of the Supreme Court in the case of **SCG Contracts (India) Pvt. Ltd. V/s. K.S.Chamankar Infrastructure Pvt. Ltd. and Ors.**[2].

15. Secondly, Mr. Deshmukh would urge, it is equally well settled that the extension of time to file written statement beyond the prescribed period of 30 days cannot be automatic and as a matter of course. It was incumbent upon the defendants to file an application seeking condonation of delay in filing the written statement beyond the initial 30 days period and also upon the Commercial Court to pass an order after recording reasons to grant extension of time to file written statement beyond the said period but within the outer limit of 120 days.

16. It was further urged that the delay cannot be condoned in a routine or mechanical manner. To lend support to these submission, Mr. Deshmukh placed reliance on decisions of the Supreme Court in the case of **Basawaraj and Anr. V/s. Special Land Acquisition Officer**[3], **Kailash V/s. Nankhu**[4] and a judgment of the Madras High Court in the case of **Ramesh Flowers Pvt.**

2 (2019) 12 SCC 210
3 (2013) 14 SCC 81
4 (2005) 4 SCC 480

Ltd. V/s. Sumit Srimal[5].

17. On the aspect of the exact date of the service of summons on Defendant Nos.1 and 2, Mr. Deshmukh controverted the submissions on behalf of the Petitioners by asserting that, the service of the summons on Defendant Nos.1 and 2, by registered post, is adequately proved. Even otherwise, when Defendant Nos.1 and 2 had the knowledge of the institution of the suit and appeared before the Commercial Court on 29 August 2024, the claim of the Defendants that the summons were not served on them, looses significance.

18. To this end, Mr. Deshmukh placed reliance on a judgment of the Supreme Court in the case of **Sunil Poddar and Ors. V/s. Union Bank of India**[6] and a Division Bench judgment of this Court in the case of **Meena Ramesh Lulla and Ors. V/s. Omprakash A. Alreja and Ors.**[7].

19. The aforesaid submissions now fall consideration.

20. Before adverting to appreciate the aforesaid rival submissions, it may be apposite to note the significant change brought about by the CPC Amendment Act, 2002, and the Commercial Courts Act, 2015, in the matter of timeline for the filing of the written statement by the defendant. The mischief of protraction of the suits for a considerable time by not filing the written statement within a reasonable period was sought to be addressed by

5 2024 SCC Online Mad 4785
6 (2008) 2 SCC 326
7 2011 SCC Online Bom 2147

incorporating strict timelines for the filing of the written statement. The provisions contained in Order V Rule 1, Order VIII Rule 1 and 10 in their application to the Commercial Courts under the Commercial Courts Act, 2015, deserve to be noted :

Order V

> "**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 the plaint and admitted the plaintiff's claim:
>
> *Provided further that were 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."*

Order VIII

> **"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.

“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.”

10. Procedure when party fails to present written statement called for by Court. - where any party from whom a written statement is required by 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 the pronouncement of such judgment a decree shall be drawn up.

“Provided that no Court shall make an order

to extend the time provided under rule 1 of this Order for filing of the written statement."

21. A conjoint reading of the aforesaid provisions would indicate that the Code prescribes the time of 30 days for filing the written statement from the date of the service of summons. If the written statement is not filed within the said initial period of 30 days, in ordinary suits a further grace period of 60 days is provided by employing the words "the Court shall allow the filing of the written statement" within the grace period, "for reasons to be recorded in writing." and subject to payment of costs, as the Court may deem proper. In the commercial suits, however, though the Court is empowered to grant grace period of 90 days for filing the written statement, yet, the specified day for filing the written statement shall not be later than 120 days from the date of service of summons. After the expiry of the said 120 days period, the right of the defendant to file written statement stands statutorily forfeited and the court is precluded from taking the written statement on record. This peremptory legislative intent is further fortified by insertion of the proviso to rule 10 of Order VIII that, "no court shall make an order to extend the time provided under rule 1 of Order VIII for filing of the written statement".

22. Construing the aforesaid provisions in the Code in their application to the suits under the Commercial Courts Act, 2015, in the case of **SCG Contracts (India) Pvt. Ltd. (supra),** the Supreme Court enunciated 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 point to the fact that the earlier law on the filing of the written statement under Order 8 Rule 1 has now been set at naught and the Court has no power to extend the time beyond 120 days for filing of the written statement.

23. Since time to file the written statement begins to run from the date of service of summons on the defendant, proof of service of summons assumes critical salience. If the factum of service of summons is incontestable, then it is a matter of computation of days only. If the factum of service of summons on a particular day is put in contest, a deeper scrutiny is warranted. In the case at hand, it seems, there are peculiarities with regard to both Defendant Nos.1 and 2 in the matter of service of the summons.

24. To start with the date of service of summons on Defendant No.1. An endeavour was made on behalf of the Respondent – Plaintiff to demonstrate that the writ of summons was served on Defendant No.1 by registered post on 3 August 2024. Copies of the tracking reports were sought to be pressed into service. Suffice to note that the learned District Judge was not prepared to place reliance on the said tracking report, as it appeared that on 3 August 2024, the envelope containing the summon was returned to the District Court, Panvel. Thus, the learned District Judge recorded a categorical finding that, it

was not clear that the summons was, in fact, served on Defendant No.1 on 3 August 2024. Instead, the learned District Judge proceeded on the premise that the summons was served on Defendant No.1 on 29 August 2024; the day defendant No.1 had appeared before the Court through an Advocate.

25. It would be contextually relevant to note that the written statement was filed by Defendant No.1 on 16 December 2024, which was well within the period of 120 days from the date of the service of the summons i.e. 29 August 2024. Thus, the controversy qua Defendant No.1 revolves around the question as to whether Defendant No.1 had sought extension of time and the Court had, in turn, granted such extension, and, eventually, the legality of the action of taking the written statement on record.

26. In regard to the Defendant No.2, the Respondent – Plaintiff made an effort to demonstrate that the summons was duly served on Defendant No.2 on 24 July 2024. Again tracking reports were pressed into service to substantiate the said claim. Tracking report indicates that the postal article was delivered on 24 July 2024.

27. It was urged on behalf of the Defendant No.2 that the claim of service of summons by registered post is required to be appreciated in the light of the report of the Bailiff, which indicates that the summons was served on 21 August 2024. The Bailiff had put oath behind the correctness of the said report. In contrast, there is no material to substantiate the claim of the Plaintiff

that the summons was served by the registered post on 24 July 2024.

28. Incontrovertibly, the summons was indeed served on Defendant No.2 through the Bailiff on 21 August 2024. The question that wrenches to the fore is, whether the summons was duly served on Defendant No.2 at an earlier point in time.

29. The postal receipt indicates that the article contained therein weighed 110 gms. Defendant No.2 claimed that it had not received the copy of the plaint and its accompaniments till 29 August 2024. In the application filed seeking extension of time on 26 September 2024, Defendant No.2 contended that it had received all the annexures along with the plaint on the last date i.e. 29 August 2024.

30. When the Defendant is sought to be bound by the strict timeline to file the written statement, it is imperative that the writ of summons be served on the Defendant along with the plaint and its accompaniments so as to facilitate the Defendant to file the written statement within the time frame. If the Defendant is not equipped to ascertain the case he is to meet, mere service of summons sans the plaint and its accompaniments would not constitute compliance of the statutory mandate so as to make the time to file written statement run qua the defendant. Service of summons, without a copy of the plaint and its accompaniments, would not constitute a valid service in the eye of law, especially in a case where the failure to file the written statement within

the outer limit of 120 days entails the grave consequence of forfeiture of right to defend the suit.

31. In the case of **Nahar Enterprises (supra),** on which reliance was placed by Mr. Patel, after referring to the provisions contained in Order V rule 2 of the Code, the Supreme Court observed that, when summons is sent calling upon the defendant to appear before the Court and file his written statement, it was obligatory on the part of the Court to send a copy of the plaint and other documents appended thereto in terms of Order V rule 2 of the Code.

32. In the case at hand, a genuine doubt arises as to whether the Defendant No.2 was served with the summons by registered post along with the plaint and its accompaniments on 24 July 2024. The weight of the article sent by registered post i.e. 110 gms., ex-facie dissuades the Court from drawing an inference that the Defendant No.2 was served with the summons along with the plaint and its accompaniments. As noted above, the Defendant No.2 claimed to have received the plaint and its annexures on 29 August 2024, the day it appeared before the Court. These facts persuade this court not to reckon the time for filing of the written statement qua Defendant No.2 from 24 July 2024. If the time to file written statement is computed from 21 August 2024, the filing of the written statement on 16 December 2024 appears to be well within the outer limit of 120 days.

33. This leads me to the submissions forcefully canvassed by Mr. Deshmukh that the extension of time to file the written statement beyond the initial period of 30 days cannot be automatic and as a matter of course. If there is a delay beyond the initial 30 days, the Defendant must ascribe sufficient cause and the Court also must condone the delay by ascribing justifiable reasons.

34. The text of Order VIII rule 1, extracted above, sustains the submission of Mr. Deshmukh. The provisions contained in Order VIII rule 1 read with Order V rule 1 in their application to ordinary suits have been construed to be directory and not mandatory. [**Kailash V/s. Nankhu (supra)].** In a given case, if the Court is satisfied that, there was sufficient cause for the Defendant for not filing the written statement within the grace period, the Court may condone the delay and permit the Defendant to file the written statement. However, Mr. Deshmukh is right in his submissions that, the legislative object behind the said prescription cannot be lost sight of and the delay cannot be condoned in routine and mechanical manner. (**M/s. R.N.Jadi and Bros. & Ors. V/s. Subhashchandra**[8]).

35. The aforesaid principles are required to be applied to the commercial suits, keeping in view the mandate that the Court cannot extend the time beyond 120 days from the date of service of summons, under any

8 AIR 2007 SC 2571

circumstances. In my considered view, a little nuanced approach is required to be adopted in a commercial suit, where the defendant seeks condonation of delay between initial 30 days and upto 120 days. A strict rigour which may apply in a ordinary suit for condonation of delay may not be apposite when the Commercial Court condons the delay beyond the initial 30 days and upto 120 days. Since the legislature has designedly used the words "shall be allowed to file beyond the initial 30 days", ordinarily the Court should lean in favour of the condonation of delay within the window period of 31st day to 120 days, albeit after examining the justifiability of the reasons.

36. In the case of **Ramesh Flowers Pvt. Ltd. (supra)**, a learned Single Judge of the Madras High Court, after following the decision of **Kailash V/s. Nankhu (supra)**, enunciated that, when the Court is expected to record reasons, it is obvious that there must be an application either for condonation of delay or extension of time in writing. It also presupposes that the defendant offers proper explanation for the delay. When there is no such application either for condonation of delay in filing the written statement or for extension of time for filing the written statement, the Court ought not to, on its own, extend time for filing the written statement while granting adjournments. Doing so would be contrary to Order 8 Rule 1 of CPC.

37. Reverting to the facts of the case at hand, it is imperative to note that Defendant No.2 had filed an application on 29 August 2024 seeking extension

of time for filing the written statement (Exh.15). Defendant No.1 did not seek extension of time on that day. The matter stood over to 26 September 2024. On that day, both Defendant Nos.1 and 2 sought extension of time for filing the written statement by ascribing reasons (Exhs.16 and 17). The learned District Judge allowed those applications. Thereafter, it appears, on successive dates till 16 December 2024, the Presiding Officer did not preside over the Commercial Court. Eventually, on 16 December 2024, written statements were filed before the in-charge Court. No application for condonation of delay was filed along with the written statements on 16 December 2024.

38. In these peculiar facts, the moot question that wrenches to the fore is, could the learned District Judge have ordered the written statements to be taken off the record on the premise that those written statements were filed beyond 120 days ? In the backdrop of the facts adverted to above, in regard to the date of service of summons on Defendant No.1, the learned District Judge computed the period for filing the written statement from 29 August 2024. Thus, the filing of the written statement on 16 December 2024, clearly being within the period of 120 days, learned District Judge could not have directed the written statement filed by Defendant No.1 to be taken off the record on the ground that it was filed beyond the period of 120 days.

39. In regard to Defendant No.2, as noted above, the Bailiff report indicated

that the summons was served on Defendant No.2 on 21 August 2024. Again the filing of the written statement by Defendant No.2 on 16 December 2024 was within the outward limit of 120 days. Since the learned District Judge did not delve into the question as to whether the summons was duly served on Defendant No.2 purportedly, by registered post, on 24 July 2024 along with the plaint and its accompaniments, even the finding qua Defendant No.2 that the written statement was filed beyond the period of 120 days cannot be sustained.

40. If the written statements were filed within the period of 120 days from the respective date of the service of summons on Defendant Nos.1 and 2, the grievance of the Plaintiff gets confined to the act of the Court in accepting the written statement without an application for condonation of delay. The learned District Judge does not seem to have ordered the taking the written statement off the record on that count. Rather, learned District Judge was of the view that the written statements were filed beyond 120 days; which, for the aforesaid reasons, appears to be factually incorrect.

41. This propels me to the aspect of the justifiability of the action of the Court in taking the written statement on record on 16 December 2024. It is not a case that the Defendants did not seek extension of time at all. As noted above, on 26 September 2024, Defendant Nos.1 and 2 had applied for extension of time. Learned District Judge has simply granted time without

specifying the time within which the written statement was to be filed, as envisaged by the proviso to Order VIII Rule 1. Thereafter, the Presiding Officer did not preside over the Court on two successive dates. Should the defendants be made to suffer the consequences ?

42. The approach of the Court ought to be informed by the postulate that, ultimately the provisions of Order VIII rule 1 are procedural. Procedure is handmaid of justice. Procedure ought not to be allowed to score a march over the substantive justice, especially where there is substantial compliance with the peremptory procedural requirement. Undoubtedly, in view of the amendments brought about by the Commercial Courts Act, 2015, the time frame in the matter of the filing of the written statement is required to be adhered to scrupulously. However, where it could be demonstrated that the written statement was indeed filed within the time limit of 120 days, the strictness of technicalities may not be permitted to impede the cause of justice. The determination cannot be dehors the realities manifested by the fact-situation of a given case.

43. In the case of **M/s. Anvita Auto Tech Works Pvt. Ltd. V/s. M/s. Aroush Motors and Anr.**[9], the Supreme Court has emphasised that the procedural rigidly ought not entail consequence of denial of substantive right of defence, as under :

9 2025 INSC 1202

> "3.The object of the procedural rules is to advance the cause of justice and not to thwart it and when the rigid adherence to technicalities of procedure causes injustice, courts have to come to the rescue by adopting a liberal approach. The courts cannot countenance a situation where substantial justice is sacrificed at the altar of procedural rigidity. Where substantial justice is at stake, technicalities must give way to ensure that the litigant is afforded sufficient opportunity to defend."

44. A profitable reference can also be made to a judgment of the Supreme Court in the case of **M.S.Sanjay V/s. Indian Bank and Ors.**[10], wherein the approach to be adopted by the High Court was delineated, as under :

> "10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties."

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10 2025 INSC 177

45. The conspectus of aforesaid consideration is that, despite being mindful of the peremptory nature of the provisions contained in Order VIII rule 1 and Order V rule 1 in their application to Commercial Courts, these provisions which are essentially procedural in nature, are required to be interpreted in a manner so as to subserve and advance the cause of justice rather than defeat it. Applying this principle to the facts of the case at hand, the impugned common order directing that the written statements filed by Defendant Nos.1 and 2 be taken off the record, deserves to be quashed and set aside.

46. Hence, the following order :

ORDER

(i) The Writ Petitions stand allowed.

(ii) The impugned common order dated 25 July 2025 stands quashed and set aside.

(iii) Written statements filed by Defendant No.1 (Exh.18) and Defendant No.2 (Exh.19) be taken on record.

(iv) Comm. Suit No.2 of 2024 be thereafter proceeded with, in accordance with law.

(v) Rule made absolute to the aforesaid extent.

(vi) No costs.

(N.J.JAMADAR, J.)