



CR-3365-2025 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

121

CR-3365-2025 (O&M)**Date of Decision: 11.08.2025**

Shiv Shakti Agro Oils Private Limited and another

... Petitioners

Versus

ADM Agro Industries Kota & Akola Private Limited

... Respondent

CORAM : HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Jaiveer Singh, Advocate
Ms. Manit Moorjani, Advocate (through VC)
for the petitioners.

AMARINDER SINGH GREWAL, J. (ORAL)**C.M No.15835-CII of 2025**

Application is allowed as prayed for.

Annexure P-8 documents are taken on record.

C.R. No.3365 of 2025

1. The present revision petition has been filed under Article 227 of the Constitution of India read with Section 115 CPC seeking setting aside of the impugned orders dated 04.02.2025 (Annexure P-1) and 03.02.2025 (Annexure P-2) passed by the learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram exercising jurisdiction under the Commercial Courts Act, 2015 in CIS No.CS-78-2023 titled as *ADM Agro Industries Kota & Akola Pvt. Ltd. Vs. Shiv Shakti Agro Oil Pvt. Ltd. and others* whereby defence of defendants No.1 to 3 has been struck off.

2. Learned counsel for the petitioners *inter alia* contends that the respondent herein filed a commercial suit for recovery against petitioners and two others before the learned Exclusive Commercial Courts, Gurugram. Petitioners received



two emails dated 07.10.2024 containing scanned copy of summons dated 30.09.2024 and further requiring their appearance in the said matter. The counsel for petitioners put in appearance before the learned Commercial Court for the very first time on 16.12.2024 and an application under Order IX Rule VII read with Section 151 CPC was filed seeking setting aside of ex parte proceedings. On the said date, counsel for the petitioners also apprised the learned Commercial Court that they had received only one page summons and not a complete copy of the plaint, on which, counsel for the respondent stated at bar that he would provide a soft copy of the plaint during the course of the day. During the course of the day, counsel for respondent provided a soft copy of the plaint through Whatsapp. However, till today, no hard copy of the suit i.e. plaint and other document is provided to the petitioners. It is further submitted that the statutory period to file written statement under Order VIII Rule I CPC began on 16.12.2024 and on the next date of hearing on 22.01.2025, counsel for the petitioners requested for some time to file the written statement. On the next date of hearing on 03.02.2025, the learned Commercial Court passed the impugned order while noting the date of service in the suit wrongly as 07.10.2024 instead of 16.12.2024. On 04.02.2025, application seeking some more time for filing written statement was filed by the petitioners but the same stood dismissed and defence of petitioners has been struck off. It is also submitted that statutory period of 30 days, extendable upto 120 days for filing written statement began from 16.12.2024 instead of 07.10.2014, as petitioners received soft copy of the plaint through Whatsapp from counsel for the respondent only on 16.12.2024. Furthermore, on 09.01.2025, mother of petitioner No.2 expired and he remained busy in performing last rites and rituals of his mother and thus, could not contact his counsel and file the written statement on



04.02.2025, thus, prays for setting aside of impugned orders dated 03.02.2025 and 04.02.2025.

3. Heard.

4. As per provisions of Order VIII Rule I CPC, where in a commercial suit the defendant fails to file the written statement within a 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 Rule 1 CPC is reproduced as under:-

*“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.

Commercial dispute of a specified value -

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.

xxxx

xxxx

xxxx”

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 the 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.”

5. A bare perusal of aforesaid provisions makes it crystal clear the period of 120 days is to be counted from the date of service of summons and not from the date when the first appearance was put in by the petitioners-defendants. Further, zimini orders placed on record as Annexure P-8 reveals that the suit was presented on 31.07.2023 and the petitioners were served through email on 07.10.2024. However, no one put in appearance on their behalf on 23.10.2024 and they were proceeded against ex parte. On 16.12.2024, an application under Order 9 Rule 5 and 6 CPC was filed by petitioner for setting aside the ex parte proceedings. On 22.01.2025, the aforesaid application was allowed and order dated 23.10.2024 was set aside. Thereafter, the case was adjourned for 03.02.2025 for filing written statement, subject to payment of costs of Rs.5000/-. However, on 03.02.2025, neither the written statement was filed nor costs was paid. Ultimately, on 04.02.2025, the defence of petitioner was struck off.

6. A perusal of provisions Order 8 Rule 1 CPC would show that in a commercial suit, 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 on 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 8 Rule 10 CPC by adding that no court shall make an order to

