



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JANUARY, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 618 OF 2025

BETWEEN:

1. M/S BHAGYALAKSHMI HOMES LLP
REGISTERED OFFICE AT:
GOLDEN HOUSE 80 FEET ROAD
#581/A, "KML ARCADE", 1ST FLOOR
8TH BLOCK, KORAMANGALA
BENGALURU - 560 095
REPRESENTED BY G.S. RUDRESH
AUTHORISED SIGNATORY

...APPELLANT

(BY SRI VENKATESH R BHAGAT, ADVOCATE)

AND:

1. SMT. SULEKHA VERMA
W/O AKASH MATHUR
MAJOR
2. SRI AKASH MATHUR
S/O LALITH MOHAN LAL MATHUR
MAJOR

BOTH EARLIER RESIDING AT J-1102
PURVA VENEZIA APARTMENTS
NEAR MOTHER DAIRY
YELAHANKA NEW TOWN
BANGALORE - 560 064.





PRESENTLY AT B1-101
SSN RAJ ETTERNIA
SILVER COUNTY ROAD, HARALUR
BENGALURU - 560 068

3. M/S. GOLDEN GATE PROPERTIES LTD.,
(A PUBLIC LIMITED COMPANY
INCORPORATED UNDER
THE PROVISIONS OF
THE COMPANIES ACT, 1956)
HAVING ITS REGISTERED OFFICE AT:
NO.820, 80 FEET ROAD
8TH BLOCK, KORAMANGALA
BENGALURU - 560 095
REPRESENTED BY
RATISH KUMAR MOORTHY
AUTHORISED SIGNATORY
4. SRI RATHISH KUMAR MOORTHY
C/O. SRI GOLDEN HOUSE
80 FEET ROAD, No. 581/A,
"KML ARCADE" 1ST FLOOR
8TH BLOCK, KORAMANGALA
BENGALURU - 560 095.
5. SRI HARSHA
GOLDEN HOUSE 80 FEET ROAD
#581/A, "KML ARCADE"
1ST FLOOR, 8TH BLOCK
KORAMANGALA
BENGALURU - 560 095
6. SRI GIRIRAJU
GOLDEN HOUSE 80 FEET ROAD
No.581/A, "KML ARCADE"
1ST FLOOR, 8TH BLOCK



KORAMANGALA
BENGALURU - 560 095

7. 360 REALTORS LLP
No.1184, 1ST FLOOR,
5TH MAIN ROAD
SECTOR 7, HSR LAYOUT
BENGALURU, KARNATAKA - 560 102
BY ITS AUTHORISED
REPRESENTATIVE
SAURABH SINGH

ALSO AT JK GOLF VIEW
1ST FLOOR, NO.267
KORAMANGALA,
INNER RING ROAD
AMAR JYOTHI LAYOUT, DOMLUR
NEAR EGL BUSINESS PARK
BENGALURU - 560 071

...RESPONDENTS

(BY SMT. AKSHATHA P, ADVOCATE FOR R-1 & 2)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1)(A) OF COMMERCIAL COURT ACT, 2015 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 06.09.2025 PASSED IN COM.O.S NO.685/2024 BY THE LXXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU CITY (CCH-90) ON I.A.NO.4 AND TO ALLOW I.A.NO.4 FILED UNDER SEC.8 OF THE ARBITRATION AND CONCILIATION ACT, 1996, TO RELEGATE THE PARTIES TO ARBITRATION IN TUNE WITH THE ARBITRATION CLAUSE & ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:



CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(a) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning an order dated 06.09.2025 passed by the learned LXXXIX Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**], dismissing I.A.No.4 in Com. O.S.No.685/2024.

2. The appellant had filed the said application under Section 8 of the A&C Act, *inter alia*, praying that the parties be referred to arbitration.

3. The appellant's application was rejected, *inter alia*, on the ground that it had not filed its written statement within the prescribed time and that its right to file the same had closed. The learned Commercial Court also found that some of the parties to the suit were not signatories to the arbitration agreement relied on by the appellant.



4. Respondent Nos.1 and 2 [**the plaintiffs**] had filed the aforementioned suit, *inter alia*, seeking a decree for a sum of ₹53,93,279/- (Rupees fifty three lakhs ninety three thousand two hundred and seventy nine only). The appellant was arrayed as defendant No.1 in the suit. Additionally, five other parties were arrayed as defendant Nos.2 to 6. Respondent Nos. 1 and 2 shall be referred to as the plaintiffs, and the parties arrayed as the defendants shall be referred to as such.

5. The plaintiffs claim that defendants Nos. 1 to 5 were Real Estate Builders and Developers, introduced to the plaintiffs by defendant No. 6. They claim they were induced to invest in the project named 'Golden Ira, ' being developed by defendant No. 1 (appellant).

6. The plaintiffs claim that they have invested a total sum of ₹49,50,000/- in the said project, which was being developed at Raghunathapura Village, Kasaba Hobli, Doddaballapura Taluk, Bengaluru Rural District. They claim that the defendants assured them that the amount they invested would be doubled by the end of three years. The plaintiffs claim that they entered into three separate agreements with respect to respective residential plots in the



project, being an agreement dated 19.08.2016 in respect of Plot No.511; an agreement dated 19.11.2016 in respect of Plot No.490; and an agreement dated 16.08.2017 in respect of Plot No.385. The plaintiffs state that they issued a legal notice dated 12.06.2023, and thereafter, negotiations were held between the parties, but the dispute could not be resolved.

7. The suit Com.O.S.No.685/2024 was registered on 27.04.2024, and the summons was directed to be issued to the defendants on 27.04.2024, returnable on 14.06.2024. The order sheet indicates that the summons to defendant No.2 (M/s.Golden Gate Properties Limited) was served. However, the summons to defendant No.1 and two other defendants remained unserved. Accordingly, on 14.06.2024, the learned Commercial Court directed the issuance of fresh summons to the said defendants, and the suit was listed for hearing on 20.07.2024. Since the plaintiffs had not taken the necessary steps, the learned Commercial Court passed an order dated 20.07.2024 directing the re-issue of the suit summons to unserved defendants (defendant Nos. 1, 3 to 6) by Registered Post Acknowledgement Due (RPAD) returnable on 24.08.2024.



8. The said summons was served, and defendant No.1 was represented by his advocate on 24.08.2024. The learned counsel appearing for defendant No.1 submitted that he had not received the plaint documents. Accordingly, the learned Commercial Court directed that the documents be furnished to defendant No. 1 and re-listed the suit on 30.08.2024. The suit could not be taken up on the said date as the learned Judge was on training and accordingly, the suit was directed to be listed on 13.09.2024. On 13.09.2024, the learned Commercial Court considered the plaintiffs' application and directed the plaintiffs to furnish a draft, process fee and to mention the name of the newspaper for substituted service to defendant Nos.3 to 6, and the suit was thereafter listed on 23.10.2024.

9. On 23.10.2024, the plaintiffs did not appear before the learned Commercial Court, and there was no representation on their behalf; the suit was adjourned to 13.11.2024. On 13.11.2024, the Court noted that the learned counsel for the plaintiffs had not furnished the proper process fee and accordingly directed the plaintiffs to take the necessary steps. The matter was thereafter listed on 19.11.2024, and the Court directed the issuance of



summons to defendant Nos. 3 to 6 through publication in newspapers and adjourned the proceedings to 18.12.2024.

10. On 18.12.2024, the learned counsel appearing for defendant No.1 sought time to file a written statement, and the Court directed that the matter be called later in the day. The matter was taken up later in the day at 03.00 p.m. However, defendant No.1 remained unrepresented. Defendant No.1 neither filed the written statement nor filed an application seeking additional time to do so. The learned Commercial Court noted the same and proceeded on the basis that the written statement "is taken as not filed", and the suit was listed for plaintiffs' evidence on 17.01.2025.

11. On 17.01.2025, the learned counsel for the plaintiffs, as well as defendant No.1, were present. The learned counsel for the plaintiffs furnished their respective affidavits of the plaintiffs [PW1 and PW2] in lieu of examination in chief. Some of the documents produced by them were exhibited, and the matter was adjourned to 21.01.2025 for the recording of further evidence of the plaintiffs who were examined as PW1 and PW2.



12. The plaintiffs (PW1 and PW2) were further examined on 21.01.2025. However, none was present on behalf of defendant No.1, and the matter was adjourned to 20.02.2025 for cross-examination of PW1 and PW2.

13. It is clear from the order sheet that defendant No.2 was proceeded *ex parte*, and the right of defendant No.1 to file the written statement was closed.

14. On 20.02.2025, defendant No.2 filed I.A.No.2 under Order IX Rule 7 of the Code of Civil Procedure, 1908 [**CPC**], seeking to set aside the order whereby defendant No.2 had been proceeded *ex parte*. Defendant No.1 also filed two applications: I.A.No.3 under Section 151 of the CPC to recall the order dated 18.12.2024, whereby its right to file a written statement was closed, and I.A.No.4 under Section 8 of the A&C Act, praying that the parties be referred to Arbitration.

15. Defendant No.1 claims that it was not served with the summons as it had not received the documents till 17.01.2025 and therefore, its right to file an application under Section 8 of the A&C Act could not be closed. It is not disputed that defendant No.1 had



received the summons and had also appeared through counsel before the Commercial Court on 24.08.2024. On that date, the learned counsel had made a grievance that he had not received the documents. However, the suit was listed again on 30.08.2024. Thereafter, the learned counsel had appeared before the learned Commercial Court on 13.09.2024, 23.10.2024, 13.11.2024 and 19.11.2024, but did not raise any grievance regarding non-receipt of the documents. Defendant No.1 was also represented through his counsel on 18.12.2024. When the suit was called, he had sought time to file a written statement. Even at that stage earlier that day, he had not raised any objection that he had not received any documents. The suit was again taken up later in the day at 03.00 p.m., but defendant No.1 was not represented, and his right to file the written statement was closed.

16. It is relevant to extract Sub-section (1) of Section 8 of the A&C Act, which reads as follows:

"8. Power to refer parties to arbitration where there is an arbitration agreement.—(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting



his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists."

17. It is clear from the plain language of Sub-section (1) of Section 8 of the A&C Act that an application under Section 8 can be made not later than the date of submitting his first statement on the substance of the dispute. In the present case, the right to furnish the written statement was closed on 18.12.2024. Therefore, the right of defendant No.1 to file an application under Section 8 stood extinguished as well.

18. In **SPML Infra Ltd. V. Trisquare Switchgears (P) Ltd.:2022 SCC online DEL 1914**, the Division Bench of the Delhi High Court (of which one of us was a member) had considered the question as to the right of a party to file an application under Section 8 of the A&C Act after the time for filing the written statement had expired. The Court had held as under:

17. Although Section 8 of the A&C Act (as in force prior to 23.10.2015) did not prescribe any time period within which a party must apply under Section 8 of the A&C Act as explained in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, the scheme of the A&C Act and the provisions of Section 8 of



the A&C Act clearly indicate that the application under that section “should be made at the earliest”.

18. It is clear from the scheme of the that once the proceedings before the court or judicial authority progress beyond the initial stage, it would no longer be permissible for a party to then turn around and seek recourse to arbitration. A mere delay in making an application under Section 8 of the A&C Act may not be fatal to a party’s right; but once the proceedings have progressed beyond the stage of completion of pleadings, such an application would not lie. This is because at that stage, the parties are sufficiently invested in the said proceedings, and it would not be permissible for any party to turn around and apply under Section 8 of the A&C Act.

19. If a party’s right to file a statement of defence is closed, the same would also result in its rights accruing in favour of the other party. Clearly, at this stage, it would not be permissible for a party to apply under Section 8 of the A&C Act even though he has not expressly evinced any intention to contest the proceedings. It is implicit in the expression “not later than submitting the first statement of substance of the dispute” that the application under Section 8 of the A&C Act can be made at the stage when it is open for a party to submit such a statement. It, obviously, follows that once such a stage is crossed, the right of the party to apply under Section 8(1) of the A&C Act would also stand closed. The scheme of Section 8 of the A&C Act does not contemplate unraveling concluded proceedings. Once the right of a party to file the written statement of defence is closed, the proceedings in a suit progress beyond the stage of completion of pleadings. It is not open for the defendant to now seek a reference to arbitration. Although Section 8 of the A&C Act (as in force prior to 23.10.2015) did not specify any time limit, it did indicate the stage of the proceedings at which a party could apply, that is, before filing of the first statement on the substance of the dispute. This clearly implies a stage at which such a statement could be filed and not thereafter.



20. If the contention advanced by the appellant is accepted, it would imply an application under Section 8 of the A&C Act can be allowed to be filed at any stage of the proceedings; even after the evidence is tendered and witnesses have been cross-examined or for that matter just before the matter is fixed for pronouncement of the decision. Clearly, this is not in conformity with the scheme of Section 8 of the A&C Act.

21. The Arbitration and Conciliation (Amendment) Act, 2015 [Act 3 of 2016] amended the A&C Act significantly. By virtue of the said Act, Sub-section (1) of Section 8 of the A&C Act was substituted and a proviso was introduced to Sub-section (2) of Section 8 with retrospective effect from 23.10.2015. Section 8 of the A&C Act, as in force with effect from 23.10.2015, reads as under:

“8. Power to refer parties to arbitration where there is an arbitration agreement-(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that



agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.”

22. The change in the language of Section 8(1) of the A&C Act is material. Whereas prior to the 2015 Amendment, Sub-section (1) of Section 8 of the A&C Act used the expression “not later than when submitting his first statement on the substance of the dispute”. Sub-section (1) of Section 8, as substituted, uses the expression “not later than the date of submitting his first statement on the substance of the dispute”. The legislative intent to introduce the words “not later than the date of” clearly stipulates a framework of time within which an application under Section 8(1) of the A&C Act can be made.

23. This amendment to Section 8 of the A&C Act, cannot be considered in isolation. It is material to note that the Parliament had also enacted the Commercial Courts Act, 2015 (Act 4 of 2016), which came into force on the same date as the Arbitration and Conciliation (Amendment) Act, 2015, that is, with effect from 23.10.2015. By virtue of Section 16 of the said Act, certain provisions of the CPC were amended in their application to any suit in respect of a commercial dispute of the specified value. The said provisions, inter alia, also included amendment to Order 8 Rule 1 and Order 8 Rule 10 of the CPC. The proviso to Order 8 Rule 1 of the CPC was substituted, which expressly provided that if the defendant failed to file a written statement within the prescribed period of thirty days, the court could, for reasons to be recorded in writing, extend further time to file the written statement. However, such extended time could not be later than 120 days from the date of service of summons. Further, the proviso to Order 8 Rule 10 of the CPC was introduced, which expressly provided that no court would make an order to extend the time provided under Order 8 Rule 1 of the CPC for filing of the written statement. Thus, the Parliament has curtailed the outer time limit of filing of a written statement in a



HC-KAR

commercial suit to 120 days after receipt of summons. The said amendment is obviously to ensure expeditious adjudication of commercial disputes.

24. Arbitration is an alternate dispute resolution mechanism to provide for an expeditious adjudication of disputes. By virtue of the Arbitration and Conciliation (Amendment) Act, 2015, certain other provisions were also introduced in the A&C Act to provide for time limits for making the arbitral award. Section 29-A of the A&C Act was introduced, which specifically provide that an arbitral award would be made within a period of twelve months from the date the arbitral tribunal enters upon reference. One of the objects of the A&C Act is to provide for an expeditious resolution of disputes in a time bound manner. In *BSNL v. Nortel Networks India Private Limited* the Supreme Court had observed that the A&C Act “has been amended twice over in 2015 and 2019, to provide for further time limits to ensure that the arbitration proceedings are conducted and concluded expeditiously”.

25. As stated above, a written statement would also fall within the sweep of expression “statement on the substance of the dispute” as used in Section 8(1) of the A&C Act. The introduction of the expression “the date of” in the context of the suit would necessarily have to be co-related with the time available or granted for filing of a written statement. The legislative intent of introducing the expression “the date of”, when read with the contemporaneous amendments to Order 8 Rule 1 of the CPC by virtue of the Commercial Courts Act, 2015, is quite clear; it is to introduce the precise time frame within which an application under Section 8(1) of the A&C Act could be filed.

26. Resultantly, if a party fails to file an application under Section 8(1) of the A&C Act for referring the parties to arbitration within the time available or granted for filing the first statement on the substance of the dispute (which would include a written statement in the context of a suit), the party would forfeit its right to apply under Section 8(1) of the A&C Act.



27. This Court is unable to accept that there is any infirmity in the decision of the learned Commercial Court. This Court is unable to concur with the decision of the Single Judge of this Court in *Hughes Communications India Ltd. and Ors. v. Union of India* that Section 8 of the A&C Act cannot be read to mean that an application under Section 8(1) of the A&C Act would not lie after the right to file the written statement has been closed. We, accordingly, over-rule the said decision.

19. In the present case, since the right of defendant No.1 to file its written statement stood closed, it was not entitled to file an application under Section 8 of the A&C Act.

20. The learned counsel for the appellant earnestly contended that the time period to file a written statement had not expired. He submitted that the limitation for filing the written statement would commence upon receipt of the complete documents along with the plaint. The learned counsel also refers to the decision of the Supreme Court in **Nahar Enterprises v. Hyderabad Allwyn Limited and another:2007(9) SCC 466**, in support of his contention.

21. The decision in the case of **Nahar Enterprises** (*supra*) is of little assistance to the appellant. In that case, the appellant claimed that the summons were served on 14.10.1988, but were not accompanied by a copy of the plaint. He had immediately sent a



telegram on 17.10.1988 and also a letter to the Court, but had not received any response. It is material to note that the Court, without issuing any further summons, fixed a date for the defendant's appearance and proceeded to adjourn the matter. On the date of the hearing fixed, the defendant was absent, and another date was fixed for an *ex parte* hearing and on that date, the suit was decreed.

22. In the aforesaid context, the Supreme Court faulted the trial Court for not appreciating how the defendant could file his written statement in the absence of a copy of the plaint and other documents. Additionally, the Supreme Court held that the trial court erred by failing to consider that the summons was served on the defendant after the date fixed for his appearance, and therefore it was obligatory to fix another date for his appearance.

23. There is no cavil that, under Order V, Rule 2 of the Code of Civil Procedure, 1908 [**CPC**], every summons must be accompanied by a copy of the plaint. In the present case, there is no dispute that defendant No.1 was served with the summons. It is not the appellant's case that the summons was not accompanied by the plaint. It, however, states that it had not received the documents required to accompany the plaint. However, we note that, apart from



raising the issue on 24.08.2024, defendant No.1 had not raised any such objection thereafter and had participated in the proceedings. During the course of proceedings on 18.12.2024, defendant No.1's counsel sought time to file the written statement, and the matter was held over. However, he neither filed any application seeking an extension of time nor appeared when the matter was called up again. The suit was thereafter listed on 17.01.2025. On this occasion as well, defendant No.1 was represented. However, the counsel had not sought any time to file the written statement, the right to which had already closed.

24. The plaintiffs examined themselves as PW1 and PW2, and tendered their affidavits in lieu of their examination-in-chief, which was accepted. The proceedings were adjourned to 21.01.2025 for further proceedings. The learned counsel relies on an acknowledgement recorded on the order sheet indicating that counsel had received the documents. However, it is apparent that the documents supplied were those marked as exhibits.

25. As noted earlier, the matter had been listed before the Commercial Court on four (4) prior occasions after 24.08.2024, the date on which defendant No.1 stated that he had not received the



documents, and no grievance on the ground of non-receipt of the documents had been raised. The counsel for defendant No.1 had participated in the proceedings unreservedly, including on 17.01.2025. On this date as well, no objections had been raised on behalf of defendant No.1. Thus, counsel for defendant No.1 had participated in the proceedings on 17.01.2025, when PW1 and PW2 had been examined.

26. PW1 and PW2 were further examined on 21.01.2025. None was present on behalf of defendant No.1 on 21.01.2025. However, no objections have been raised on his behalf earlier. The matter was thereafter adjourned for cross-examination of PW1 and PW2 to 20.02.2025. At that stage, defendant Nos.1 and 2 had filed the application.

27. It is also material to note that defendant Nos.1 and 2 are represented by the same counsel. The record indicates that the summons was served on defendant No.2, which is at the same address as that of defendant No.1. Defendant No.2 had been proceeded ex parte on 14.06.2024.



28. It is also relevant to note that defendant No.1 (appellant) had filed the application under Section 8 of the A&C Act on 20.02.2025, which was granted thirty days after defendant No.1 claims to have received the documents. Thus, the said application was clearly beyond the period prescribed for filing the written statement. In **SSCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210**, the Supreme Court had observed as under:

“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 5 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 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 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 8 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-emphasised by re-inserting yet another proviso in Order 8 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 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.”

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 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.”



29. As explained by the court, the written statement was required to be filed within a period of thirty days. However, the court may grant an additional ninety days, subject to recording reasons in writing and payment of costs as it deems fit. In the present case, more than 120 days had elapsed after the summons was served. Even according to the appellant, the application was beyond the period of thirty days prescribed for filing the appeal.

30. The learned counsel appearing for defendant No.1 had sought documents on 24.01.2024. The learned Commercial Court had directed that the same be furnished to him and relisted the suit on 30.08.2024. No grievance was made by defendant No.1 thereafter.

31. The application under Section 8 was filed nearly seven months thereafter.

32. Thus the application under Section 8 of the A&C Act was filed much after the time for filing the same had expired.

33. We are unable to accept the given facts and circumstances that the summons was not served on defendant No.1. We find no fault with the decision of the learned Commercial Court.



34. In our view, it is not open to the defendant No.1 to raise any objections regarding non-receipt of documents, having participated in the proceedings without raising any objections on several occasions. It is not disputed that the plaintiffs had served a legal notice prior to filing the suit, and the defendants were also invited to pre-institutional negotiations. In the given facts, the contention that defendant No.1 had not received the documents cannot be accepted and must be rejected.

35. In view of the above, the appeal is dismissed.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**