

2025 LiveLaw (SC) 988

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ARAVIND KUMAR; J., N.V. ANJARIA; J.

Special Leave Petition (Civil) No. 21917 of 2025; October 8, 2025

M/S ANVITA AUTO TECH WORKS PVT. LTD. *versus* M/S AROUSH MOTORS & ANR.

Commercial Courts Act, 2015 — Code of Civil Procedure, 1908 (CPC) — Order VIII Rule 1 (Proviso) (as amended by Commercial Courts Act, 2015) — Written Statement — Extension of Limitation (COVID-19 Pandemic) — Right to Cross-Examine Witnesses (Even without Written Statement) — Appeal against rejection of Written Statement and decreeing of suit - The Supreme Court noted that the period for filing the Written Statement (WS) fell within the duration (15.03.2020 to 28.02.2022) excluded for the purpose of computing limitation - Held that WS filed belatedly in a commercial suit after the mandatory period of 120 days cannot be rejected when it was filed during COVID-19, as the delay fell entirely within the COVID-19 limitation extension ordered by Supreme Court. [Relied on *In Re: Cognizance for Extension of Limitation* (2022) 3 SCC 117; *Aditya Khaitan & Ors. v. IL & FS Financial Services Limited* 2023 INSC 867; Paras 28, 29]

Code of Civil Procedure, 1908 (CPC) — Order VIII Rule 10 - Right to Cross-Examination — Held, the reason given by the Trial Court for taking the cross-examination of the Defendant as "Nil" (failure to file WS) is perverse and contrary to the right of defence available to the defendant - Even if a defendant does not file a Written Statement, and the suit proceeds *ex-parte*, the limited defence, including the right to cross-examine the plaintiff's witnesses to prove the falsity of the plaintiff's case, is not foreclosed - The denial of the right to cross-examine cannot be taken away when the WS was not allowed to be taken on record, as cross-examination is vital to elicit the truth and impeach the witness's credibility - Appeal allowed. [Relied on *Ranjit Singh v. State of Uttarakhand*, 2024 INSC 724; Paras 31].

For Petitioner(s): Mr. Pb Suresh, Sr. Adv. Mr. Sughosh Subramanyam, Adv. Mr. Kartik Pant, Adv. Ms. Sanskruti Samal, Adv. Ms. Deeksha Gupta, Adv. Mr. Yadhuvansh Gaurav, Adv. Mr. Chaitanya, AOR

For Respondent(s): Mr. Balaji Srinivasan, AOR Mr. Vishwaditya Sharma, Adv. Mr. Suraj Sampath, Adv.

J U D G M E N T

ARAVIND KUMAR, J.

1. Heard. Leave Granted.
2. The present controversy can be encapsulated in words of the Hon'ble Justice V.R. Krishna Iyer:

“Procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It is the handmaid of justice and not its mistress”

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. The present controversy must be tested on the said principle.

4. The Appellant herein challenges the Impugned Judgement and order dated 20.05.2025 passed by the High Court of Karnataka at Bengaluru in Commercial Appeal No. 19 of 2023 which has affirmed the Judgement and decree dated 15.11.2022 passed by the Additional City Civil & Sessions Judge (Exclusive Commercial Court) in Original Commercial Suit No. 372 of 2021 filed by the Respondent No. 1-M/s. Aroush Motors for recovery of monies.

5. For convenience, we will be referring the parties as per their rank before the Trial Court, as such, the Appellant herein being Defendant No. 1 and Respondent No. 1 & 2, being Plaintiff and Defendant No. 2, respectively.

6. The facts shorn of unnecessary details are summarized hereinunder:

7. The Defendant No. 1-M/s. Anvita Auto Tech Works Pvt. Ltd. (Appellant-herein), launched a flagship motorcycle by the name of CFMOTO in India in 2019 and invited applications for its dealership across the country including Bengaluru City. Plaintiff-M/s. Aroush Motors (Respondent No. 1-herein) applied and was provisionally appointed dealer under a Letter of Intent dated 03.09.2019. In consideration of the dealership, the plaintiff remitted a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) towards security deposit to Defendant No. 1, incurred expenditure of rent and interiors for setting up a showroom. Further, the plaintiff paid sum amount to Rs. 70,00,000/(Rupees Seventy Lakhs Only) towards spare parts, software, equipment and initial stock of motorcycles. Moreover, additional sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) was remitted to Defendant No. 1 and on the advice of Defendant No. 1, the plaintiff also remitted Rs. 7,06,900/- (Rupees Seven Lakhs Six Thousand Nine Hundred Only) to Defendant No. 2-Conair Equipment Pvt. Ltd (Respondent No. 2-herein) for service centre equipment being its authorised service provider.

8. The Defendant No. 1 supplied Nineteen (19) motorbikes of BSIV Category to Plaintiff out of which the Eight (8) were sold. On 01.04.2020, the Government imposed ban on the sale of BS-IV Category vehicles, as such, Defendant No. 1 imposed prohibition upon sale of the such motorcycles but promised to supply Kits and Equipment to upgrade the motorcycles to BS-VI Category. Nevertheless, due to the inability of Defendant No. 1 to supply the same, the plaintiff's business was stalled and is said to have sustained substantial loss, following which, the plaintiff terminated the dealership of Defendant No. 1 on 14.09.2020 alleging breach of obligations and sought recovery of monies invested by way of filing the present Commercial Original Suit (Com. O.S.) No. 372 of 2021 claiming a sum of Rs. 1,78,03,090/- (Rupees One Crore Seventy-Eight Lakhs Three Thousand Ninety Only) from Defendant No. 1 with an Interest of 18% (Eighteen Percent) and Rs. 7,06,900/- (Rupees Seven Lakhs Six Thousand Nine Hundred Only) from Defendant No. 2 with an Interest of 18% (Eighteen Percent) till the realization of payments along with 3 (Three) Interim Applications (IAs) No. I to III.

9. After the service of summons, the Defendant No. 1 appeared on 07.08.2021 but did not file the Written Statement on the said date. Later Defendant no. 1 preferred I.A. No. IV seeking extension of time to file Written Statement on 07.09.2021. Meanwhile, the 3 (three) I.As which were filed with Com. OS No. 372 of 2021, came to be decided by way of order dated 30.10.2021 wherein IA No. 1 which sought direction to defendant no. 1 to take back the remaining motorcycles from possession of plaintiff was allowed, but the other two IAs which had sought for mandatory injunction against Defendant No. 1 & 2, respectively, to refund the monies were directed to be kept in abeyance for consideration along with main suit since the nature of relief was that of final in nature.

10. On 14.11.2021, the time period of 120 days as prescribed under the law for filing Written Statement in a commercial suit expired and Defendant No. 1 again preferred I.A. No. 5 under section 148 of the Code of Civil Procedure, 1908 (hereinafter to be referred as "CPC") seeking extension of time to file Written Statement. The plaintiff filed its objection to I.A. No. 5 on 06.12.2021 and preferred I.A. No. 6 under section 151 of CPC seeking to strike out the defence. However, while the said IAs were pending objections, the defendant no. 1 on 07.01.2022 preferred I.A. No. VI/6A along with Written Statement seeking permission to file the same by seeking condonation of delay on the premise that the delay was due to non-residing of the defendant no. 1 in Bengaluru and COVID-19.

11. The said IA came to be Rejected by order dated 22.03.2022 by the Trial Court and consequently, the Written Statement also came to be rejected. The Defendant No. 1 challenged the order of dismissal of IA by way of Commercial Appeal bearing No. 189 of 2021. Meanwhile, the Written Statement on behalf of Defendant No. 2 was also taken as Nil. The suit progressed subsequently to the stage of recording plaintiff's evidence and on 30.07.2022, 10.08.2022 and on 19.08.2022 the examination-in-chief of PW1 was recorded and cross-examination of the defendant was taken as Nil by the Trial Court on the ground that defendant had failed to file their Written Statement within Stipulated time and the matter was posted for defendant's evidence.

12. Ultimately, the suit came to be partly decreed on 15.11.2022 wherein Defendant No.1 was directed to pay sum of Rs. 1,78,03,090/(Rupees One Crore Seventy-Eight Lakhs Three Thousand Ninety Only) and Defendant No. 2 was directed to pay Rs. Rs. 7,06,900/- (Rupees Seven Lakhs Six Thousand Nine Hundred Only) with future interest of 9% (Nine Percent) per annum each from the date of suit till realization. Consequently, in the light of the judgement and decree, the Commercial Appeal No. 189 of 2022 came to be dismissed as withdrawn.

13. The Defendant No.1 being aggrieved by the judgement and decree of the Trial Court preferred Commercial Appeal No. 19 of 2023 which came to be dismissed by the Impugned Order dated 20.05.2025. Hence, the present appeal.

14. We have heard the Learned Counsels appearing on behalf of the parties and perused the material on record.

SUBMISSIONS ON BEHALF OF THE APPELLANT/DEFENDANT NO. 1

15. Shri Pb. Suresh, Learned Senior Counsel appearing on the behalf of the appellant submitted that court below erred in rejecting the written statement dated 07.01.2022 which is in contravention of the orders passed by this Court in ***Suo Moto Writ Petition (C) No. 3 of 2020*** extending the limitation due to COVID-19 wherein the limitation period between 15.03.2020 to 28.02.2022 was waived off in all cases including commercial disputes. To buttress his contention, the learned senior counsel has relied upon the decisions of this court in ***Babasaheb Raosaheb Kobarne & Anr. v. Pyrotek India Private Limited and Ors. 2022 SCC SC 1315*** and ***Prakash Corporates v. Dee Vee Projects Limited (2022) 5 SCC 112***.

16. The Learned Senior Counsel further submitted that failure on the part of the defendant to file the Written Statement within the time permitted by the court would not tantamount to pronouncement of judgment against the defendant. To back the said contention, the learned senior counsel relies upon the decision of this court in ***Asma Lateef v. Shabbir Ahmad (2024) 4 SCC 696***.

17. The Learned Senior counsel vehemently submitted while placing reliance upon the decision of this court in ***Ranjit Singh v. State of Uttarakhand, 2024 INSC 724*** that even without filing of written statement, the right to cross-examine survives and not permitting the same has resulted in petitioner's substantial rights being defeated without adjudication on merits.

18. He further submitted that Order VIII Rule 10 CPC does not empower the court to automatically pass a decree merely because a written statement is not filed. The court must still assess whether a *prima facie* case is made out and in the present case, the decree was passed summarily without such satisfaction being recorded.

19. He lastly submitted that if the impugned decree is executed, it would cause severe and irreparable loss to the petitioner despite him not having had a fair opportunity to contest the claim and it is settled principle that procedural rules must not be used to defeat substantial justice.

SUBMISSION ON BEHALF OF THE RESPONDENT NO. 1 PLAINTIFF

20. *Per contra*, Shri Balaji Srinivasan, learned counsel appearing on behalf of the respondent no. 1 submits that the right of cross-examination on the part of defendant No. 1 stood forfeited on account of non-filing of written statement. The High Court has rightly concluded that despite repeated and adequate opportunities afforded to the defendant No. 1, he wilfully chose not to exercise his right of cross-examination.

21. The Learned Counsel further submits that at no stage during the proceedings before the trial court did the defendant no. 1 Company chose to file an application for recall of the order closing the stage for cross-examination of PW1 nor did it file any appeal or writ petition challenging such order of closing the stage. Thus, defendant No. 1 had acquiesced and is now estopped from raising such plea at this belated stage especially when defendant no. 1 did not take such a ground even in the memo of appeal.

22. The Learned counsel also submitted that Defendant No. 1 has approached this Court with unclean hands. Its conduct before the courts below reveal a consistent pattern of dilatory tactics, false pleadings, and abuse of process. It failed to file the Written Statement within the statutory period, allowed the opportunity of cross-examination to lapse and never challenged the orders closing its right to cross-examination at the first instance. Hence, the present Special Leave Petition is only a last-ditch attempt to obstruct & delay the lawful execution of the decree.

ISSUE FOR CONSIDERATION

23. This Court while issuing notice in the present special leave petition on 18.05.2025 was of the view that the only issue that arises for consideration is:

“Whether the High Court was correct in observing that on account of non-filing of written statement by the defendant, his right to cross-examination is taken away?”

24. Before we delve into the merits of the case, it is apposite to lay down the chronology of factual matrix pertaining to stage of suit especially which are central to the determination of the present dispute as emerges from the perusal of the material on record.

Sr. No.	Stages of Commercial Suit COM. OS NO. 372 of 2021	Date
1.	Institution of the Suit before the commercial court	18.06.2021
2.	Suit summons issued to Defendant no. 1 & defendant no. 2	23.06.2021
3.	Summons served upon the defendant no. 1	17.07.2021

4.	Defendant No. 1 entered appearance through its counsel.	07.08.2021
5.	The Commercial Court directed the defendant No. 1 to file WS by 07.09.2021	17.08.2021
6.	IA No. IV preferred by the Defendant No. 1 seeking extension of time to file WS.	07.09.2021
INITIAL 30 DAYS PERIOD COMPLETED		
7.	Completion of Statutory period of 120 days as mandated under 2nd proviso to sub-rule (1) of Rule 1 of Order V and Proviso to sub-rule (1) of Rule 1 of Order VIII CPC as per the Special Amendment under the Commercial Courts Act, 2015.	14.11.2021
8.	Defendant No. 1 files IA No. 5 under section 148 CPC for enlargement of time for filing WS	24.11.2021
9.	Plaintiff-Respondent No. 1 filed IA No. 6 to strike out defence under section 151 CPC and Defendant No. 1 filed IA No. 7 under section 148 CPC for extension of time to file WS.	06.12.2021
10.	IA No. VI/6A filed by the defendant no. 1 seeking permission to file WS along with WS.	07.01.2022
11.	Rejection of IA No. VI/6A and consequent rejection of WS to be taken on record.	22.03.2022
12.	Commercial Appeal No.189/2021 preferred challenging rejection of WS.	21.04.2022
13.	For recording of evidence of PW-1 adjourned at the instance of plaintiff on.	30.07.2022 to 10.08.2022
14.	Meanwhile, PW1 examined-in-chief and cross examination of Defendant taken as “Nil” as they failed to file their WS within stipulated time.	19.08.2022
15.	Suit came to be partly decreed.	15.11.2022

25. The aforesaid chart clearly reveals that though the summons was served upon the defendant no. 1 company on 17.07.2021, they could not file the Written Statement up till 07.01.2022 which was long after the statutory period of 120 days had already expired on 14.11.2021.

26. The law regarding the mandatory filing of Written Statement in a commercial dispute within the statutory period is clearly envisaged under Proviso to sub-rule (1) of Rule 1 of Order VIII Code of Civil Procedure, 1908 (CPC) and Second Proviso to Sub-rule (1) of Rule 1 of Order V CPC as amended by the Special Amendment under the Commercial Courts Act, 2015. The said provisions impose an absolute embargo upon the courts to accept the written statement after the expiry of one hundred twenty (120) days. For easy reference, the aforesaid bare provision of Proviso to subrule (1) of Rule 1 of Order VIII CPC is extracted herewith:

“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 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.”

27. The mandatory nature of statutory period in filing WS in a commercial dispute stood fortified by the decision of this court in **SCG Contracts (India) Pvt. Ltd. v. K.S. Chamankar Infrastructure Private Limited and Ors. (2019) 12 SCC 210** wherein this

court held that timeline of 120 days' fixed by the statute is not directory but rather mandatory, therefore, commercial courts cannot condone the delay beyond 120 days in filing the WS. On this very aspect the appeal could have been dismissed nevertheless, there is something more vital to the present issue which this court cannot lose sight of.

28. The meticulous scrutiny of the chronological chart as mentioned *supra* shows that the limitation period for filing the WS commenced on 17.07.2021 and ended on 14.11.2021. Both these dates fell at a time when our nation was in garb of global pandemic of COVID-19 which affected the lives of millions of people around the world as well our judicial systems. This court was conscious of the fact as to the difficulty faced by the litigants in approaching the courts physically and was of the view that the said pandemic should not become the reason to vandalise the rights of the litigants due to expiry of period of limitation who could have approached the court well within the time had it not been for the pandemic. Hence this court ***In Re: Cognizance for Extension of Limitation (2022) 3 SCC 117 in Suo Moto Writ Petition (C) No. 3 of 2020*** by exercise of its powers under Article 142 of the Constitution of India passed series of orders to exclude the period commencing from 15.03.2020 till 28.02.2022 for the purpose of computing the limitation period under any general or special laws in respect of all judicial or quasi-judicial proceedings. For the purpose of reference, the relevant portion of the order is extracted below:

“ ”

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

..... ”

29. This court in ***Aditya Khaitan & Ors. v. IL & FS Financial Services Limited 2023 INSC 867*** had encountered a similar situation wherein the High Court had disallowed the appellant to file the Written Statement in a commercial dispute on the premise that the same was beyond the mandatory statutory period of 120 days. This Court while relying upon the orders passed ***In Re: Cognizance for Extension of Limitation (Supra)*** allowed the appeal and directed the Written statement to be taken on record. Further this court in ***Babasaheb Raosaheb Kobarne & Anr. v. Pyrotek India Private Limited & Ors. 2022 SCC OnLine SC 1315*** and ***Prakash Corporates v. Dee Vee Projects Limited (2022) 5 SCC 112*** had allowed the appellant to file its written statement notwithstanding the fact that it was filed beyond the period of 120 days in the light of the COVID-19 pandemic wherein the period of limitation was extended as stated *supra*.

30. Relegating back to the facts of the instant case, the statutory period of 120 days commenced from date of service of summons on 17.07.2021 and as per section 9 of the General Clauses Act, 1897, the date of service had to be excluded therefore, from 18.07.2021, the 120 days' period commenced and it ended on 14.11.2021. In the light of

aforesaid discussion, it can be very well said that both the dates fell within the sweep of period between 15.02.2020 to 28.02.2022. In fact, during this period itself, to be precise on 24.11.2021 itself defendant No.1 had filed I.A. No.5 seeking enlargement of time to file written submission and subsequently on 07.01.2022 had filed IA No.VI/ 6A seeking permission to file written submission enclosing the written submission also. Therefore, the High Court ought to have excluded the aforesaid period for the purpose of filing the written statement and ought to have permitted the defendant No.1 to file written statement on record and contest the suit on merits rather than dismissing the appeal.

31. There is another consideration why the present appeal deserves to be allowed. The perusal of the records particularly, the order sheet of the trial court dated 19.08.2022 (Annexure P-17) clearly reveal that after the examination-in-chief of PW1 was closed, the cross-examination of Defendant no. 1 was taken as “Nil” on the ground that defendant had failed to file their written statement within stipulated time. The said reason is absolutely perverse and is contrary to the right of defence available to the defendant. The purpose of cross-examination is to elicit the truth from the witness and impeach its credibility. When the WS was not allowed to be taken on record, the denial of the right to cross-examine cannot be taken away by leaving the defendant in lurch and this has acted as final nail in the coffin to defendant’s right of defence. This court not long back in **Ranjit Singh v. State of Uttarakhand, 2024 INSC 724** had held that even when the defendant has not filed the Written statement, his right to cross-examine the plaintiff witnesses is not foreclosed. The relevant portion of the decision for easy reference is extracted herewith:

“5.....At this stage, we must clarify the legal position. Even if a defendant does not file a written statement and the suit is ordered to proceed ex-parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff’s case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the law of limitation.....”

32. Thus, in the light of the aforesaid discussion, we are of the considered view that the present appeal deserves to be allowed and accordingly, the same stands **Allowed**. Consequently, the impugned judgment dated 20.05.2025 in Commercial Appeal No. 19 of 2023 and consequently the judgment and decree passed in commercial suit No.372/2021 by the Addl. City Civil and Sessions Judge (Exclusive Commercial Court) dated 15.11.2022 quo defendant No.1 (Appellant herein) is set aside and the matter is remanded back to the trial court to dispose of the same after allowing the appellant herein to file the Written Statement subject to payment of cost to the tune of Rs. 1,00,000/(Rupees One Lakh Only) and to permit the appellant to exercise his right of cross-examination of plaintiff’s witnesses. The trial court is requested to dispose of the present commercial suit expeditiously and preferably within a period of Six (6) months from today.