



2025:DHC:5597-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 15.07.2025

+ **RFA(COMM) 83/2023 & CM Nos. 22970/2023, 22971/2023 & 22973/2023**

M/S GS MARBLES

.....Appellant

versus

M/S SHREE GRANITES

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Dikshant Khanna, Advocate.

For the Respondent : Mr. Jitin Mann, Advocate with AR of the Respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The Appellant has filed the present Appeal against the judgment and decree dated 02.03.2023 (“**impugned judgment**”) passed by the learned District Judge (Commercial Court)-02, Tis Hazari Court, Delhi, (“**Trial Court**”) in CS (COMM) No. 496/2021 titled “*M/S Shree Granites v. M/S G.S. Marbles*” (“**Suit**”) and against the Orders dated 11.07.2022 and 23.09.2022 passed by the learned Trial Court.



2. *Vide* Order dated 11.07.2022, the learned Trial Court closed the right of the Appellant to file the Written Statement and the Appellant was proceeded *ex-parte*. *Vide* Order dated 23.09.2022, the learned Trial Court set aside the said Order dated 11.07.2022. However, the learned Trial Court further observed that since the period of 120 days for filing the Written Statement was already over, the Appellant's right to file the same was closed.

3. *Vide* the impugned judgment, the learned Trial Court has decreed the Suit in favour of the Respondent and against the Appellant for ₹6,26,617/- (Rupees Six Lakh Twenty-Six Thousand Six Hundred Seventeen) along with interest @ 18% p.a. till the date of filing of the Suit and interest @ 12% p.a. from the date of institution of Suit till realization.

FACTUAL MATRIX

4. The Respondent is engaged in the business of sale and purchase of granite, marble, tile, etc. The Appellant had approached the Respondent at its Delhi office for the sale of granite marbles, and a purchase order dated 15.06.2018 ("**Purchase Order**") for the supply of granite slabs worth ₹4,09,200/- (Rupees Four Lakhs Nine Thousand Two Hundred), was issued by the Respondent to the Appellant. It was contended that the Purchase Order was duly accepted by the Appellant. The Respondent further contended that in order to enable the Appellant to supply the granite slabs, the Respondent had also paid the complete advance amount to the Appellant.

5. The Respondent alleged that the Appellant failed to supply the granite slabs to the Respondent as per the Purchase Order, and thus, the Respondent



was constrained to issue a Demand Letter dated 04.03.2021 (“**Demand Letter**”), wherein the Respondent demanded the advance payment made alongwith interest within 15 days from receipt of the Demand Letter by the Appellant.

6. The Appellant, after the receipt of the Demand Letter dated 04.03.2021, gave reply *vide* Reply Letter dated 23.03.2021 (“**Reply Letter**”), wherein the Proprietor of the Appellant firm, Mr. Manoj Saini, categorically denied the receipt of the advance money by him, stating that the Appellant firm and its accounts were entirely under the control of one Mr. Rajaram Agarwal.

7. It was alleged in the Reply Letter that the said transaction was carried out with the sole intention of saving GST. It was also stated in the Reply Letter that the said person, Mr. Rajaram Agarwal was engaged in the act of creating fictitious firms in the name of his employees and placing orders with other firms to evade the payment of GST and that the Appellant also is a victim of the fraud committed by the said person. The Proprietor of the Appellant firm, Mr. Manoj Saini, further claimed in the Reply Letter that he was not linked to the transactions of the Appellant firm with the Respondent in any manner.

8. The Appellant further apprised the Respondent about the enquiry conducted by the GST Department back in 2018 and that the matter is still under investigation with the Department. Further, it was stated in the Reply Letter that the GST Department, after examining the fraud committed by Mr. Rajaram Agarwal, had duly cancelled the registration of the Appellant firm.

9. Thereafter, the Respondent filed the Suit against the Appellant on



22.10.2021 for the recovery of ₹6,26,617/- (Rupees Six Lakh Twenty-Six Thousand Six Hundred Seventeen) alongwith interest @18% p.a., on the grounds that the Respondent had not received its dues, which as alleged, had arisen due to the non-supply of materials by the Appellant despite due receipt of the advance payment by them.

10. The Appellant was served through e-mail and WhatsApp on 12.02.2022. The Appellant entered its appearance through its Counsel, Mr. Satya Prakash, on 21.04.2022. The Appellant claims that after the receipt of the summons of the Suit, it came to know about the Purchase Order and realized that signatures were forged on the said Purchase Order.

11. The learned Trial Court *vide* Order dated 11.07.2022, observed that no Written Statement had been filed by the Appellant, thereby closing the right of the Appellant to file a Written Statement and striking off its defence. Since the Appellant failed to appear despite being called twice on 11.07.2022, *vide* the Order passed on said date, the Appellant was proceeded *ex-parte*.

12. Thereafter, the Appellant filed an Application under Order IX Rule 7 of the Code of Civil Procedure, 1908 (“CPC”) seeking to set aside the Order dated 11.07.2022. The learned Counsel appearing for the Appellant specifically took the ground that the learned Counsel for the Appellant was severely affected by pulmonary disease, due to which he could neither appear nor contact the Appellant.

13. The said Application was allowed *vide* Order dated 23.09.2022, thereby, setting aside the Order dated 11.07.2022 by which the Appellant was proceeded *ex-parte*. However, in the same Order the learned Trial Court noted that since the period of 120 days to file the Written Statement had



already elapsed, the Appellant's right to file the same stood closed.

14. Subsequently, the Respondent moved an Application under Order VIII Rule 10 of the CPC before the learned Trial Court seeking the grant of a decree in its favour.

15. A reply to the Application under Order VIII Rule 10, CPC was filed by the learned Counsel for the Appellant, and it was urged that the Application of the Respondent was liable to be dismissed as the issue involved in the Suit was required to be proved by the Respondent, and this could only be achieved by way of trial.

16. The learned Trial Court proceeded to allow the Application of the Respondent under Order VIII Rule 10, CPC *vide* impugned judgment dated 02.03.2023, while decreeing the Suit against the Appellant.

17. Accordingly, the Suit was decreed in favour of Respondent and against the Appellant for ₹6,26,617/- (Rupees Six Lakhs Twenty-Six Thousand Six Hundred Seventeen) alongwith interest @ 18% p.a. till the date of filing of the Suit and interest @ 12% p.a. from the date of institution of the Suit till realization of the decretal amount.

SUBMISSIONS ON BEHALF OF THE APPELLANT

18. Mr. Dikshant Khanna, learned Counsel appearing for the Appellant submitted that the Appellant, after the receipt of the Demand Letter, gave reply *vide* Reply Letter dated 23.03.2021, wherein the Appellant categorically denied the receipt of the advance money from the Respondent and stated that the Appellant was not aware of any such transaction entered into with the Respondent in any manner. The Appellant in the said reply had categorically pointed out that *M/s GS Marbles* was created and managed by



Mr. Rajaram Agarwal, with the sole intention of defrauding the GST Department. It was further submitted that the entire transaction was a fraud perpetrated by the said person.

19. It was submitted that the said person was engaged in the act of creating fictitious firms in the name of the employees and placing orders with other firms to evade the payment of GST. It was submitted that the Appellant also was a victim of the fraud committed by the said person.

20. The learned Counsel appearing for the Appellant submitted that the Appellant apprised the Respondent about the enquiry conducted by the GST Department back in 2018 and that the matter is still under investigation with the Department. Further, the GST Department, after becoming aware of the fraud committed by Mr. Rajaram Agarwal, had cancelled the registration of *M/s GS Marbles* on 22.09.2020. It was further submitted that the Appellant was never involved in any of the transactions and had no knowledge of any transactions as all the accounts and books of *M/s GS Marbles* have been seized by the Directorate General of Goods and Service Tax Intelligence, Jaipur and are currently in their possession as part of the investigation.

21. The learned Counsel appearing for the Appellant submitted that the Appellant made inquiries from various sources and learnt that ₹3,00,000/- (Rupees Three Lakhs) was received by *M/s GS Marbles* in its account on 20.06.2018. It was further submitted that the same amount was transferred by Mr. Rajaram Agarwal to the firm of his relative, Ms. Sushila Devi Agrawal, on 21.06.2018. Thereafter, on 09.08.2018, the said amount was again transferred from the firm of Ms. Sushila Devi Agrawal to *M/s GS Marbles*. Subsequently, *M/s GS Marbles* received a sum of ₹1,02,970/- (Rupees One Lakh Two Thousand Nine Hundred Seventy) in its account on



09.07.2018. After that, a total amount of ₹4,02,970/- (Rupees Four Lakh Two Thousand Nine Hundred Seventy) was transferred to *Kanaram Begaram Enterprises*, which is a Jaipur-based firm.

22. It was further submitted that the present Appeal is filed through Mr. Manoj Saini, who works as an unskilled workman in the marble area of Kishangarh, Ajmer, and that he has a meagre income. Mr. Rajaram Agarwal and his associates approached him with an offer to join the marble business and earn a monthly income and took advantage of poor financial situation of Mr. Saini. Subsequently, Mr. Rajaram Agarwal established a firm called *M/s GS Marbles* and appointed Mr. Saini as its Proprietor. They registered the firm and opened a bank account, requiring Mr. Saini's signature on blank cheques and the firm's letterhead.

23. In view of the above, it was submitted that the present Appeal should to be allowed and the impugned judgement and decree alongwith the impugned orders deserve to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

24. Mr. Jitin Mann, learned Counsel appearing on behalf of the Respondent submitted that the Respondent paid the complete advance amount to the Appellant and the same was duly credited into the account of the Appellant once the Purchase Order was duly accepted by the Appellant, which also bore the signature of its Proprietor, Mr. Saini.

25. The learned Counsel for the Respondent submitted that the summons were duly served upon the Appellant on 12.02.2022 and Counsel for the Appellant also appeared, but he failed to file the Written Statement in the Suit. Consequently, the Appellant was proceeded *ex-parte* on 11.07.2022.



However, on the next date of hearing on 23.09.2022, an Application under Order IX Rule 7 of the CPC was filed on behalf of the Appellant, which was allowed. Since the period of 120 days from the date of service of summons had elapsed, right to file Written Statement was closed.

26. It was further submitted by the learned Counsel appearing for the Respondent that the Respondent moved an Application under Order VIII Rule 10 of the CPC, which was allowed, and the impugned judgment was passed in favour of the Respondent.

27. It was submitted by the learned Counsel appearing on behalf of the Respondent that the Appellant had failed to file the Written Statement in the Suit even after being duly served. The Appellant further sought time to file the Written Statement on 21.04.2022 but again failed to do so. Ultimately, on 11.07.2022, since the period of more than 120 days from the date of the service had elapsed, the right to file Written Statement was closed.

28. The learned Counsel appearing on behalf of the Respondent relied upon the following judgments:

- i. ***M/s SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt.***: (2019) 12 SCC 210, the Supreme Court held that ordinarily a written statement is supposed to be filed within a period of 30 days. However, a grace period of a further 90 days is granted within which the written statement can be filed, which the Court, may allow for reasons to be recorded in writing and on payment of costs by the Defendant. Of pertinent importance is the fact that beyond the 120 days from the date of service of Summons, the Defendant forfeits the right to file the written statement and Order VIII Rule 1 of the CPC provides



that the Court shall not allow the written statement to be taken on record thereafter. Order VIII Rule 10 of the CPC provides that the Court has no further power to extend the time beyond this period of 120 days.

- ii. ***M/s Vidhi Electrical & Eng Co v. C & S Electrical Ltd.***: 2022 SCC OnLine Del 1429, the Division Bench of this Court held that as the CPC requires the filing of written statement within 30 days and in justifiable cases, grant of extension beyond 30 days up to 120 days, it would be necessary that the Application seeking condonation of delay be filed along with written statement to explain the delay and the constraints in filing the written statement within time. Only in justifiable cases would the delay be condoned.
- iii. ***Atanu Bhattacharjee & Anr v. Corporation Bank***: 2024 SCC OnLine Del 2399, this Court held that one of the reasons given by the learned Trial Court was that since the appellants' right to file written statement has been forfeited due to which they failed to defend the respondent's claim, therefore, the suit was liable to be decreed in terms of Order VIII Rule 10 of the CPC. It was held that since the appellants failed to file their written statement after the lapse of 120 days, the view taken by the learned Trial Court was correct and the same was upheld by this Court.
- iv. ***Christian Broadcasting Network Inc. v. CBN News (P) Ltd.***: 2018 SCC OnLine Del 11666, this Court held that the defendant's right to file the written statement was closed



keeping in view Order VIII Rule 10 of the CPC, which was inserted by the legislature to expedite the process of justice by curbing dilatory tactic, which is often resorted to by the defendants.

29. Accordingly, it was submitted that the Appeal ought to be dismissed.

ANALYSIS AND FINDINGS

30. Order VIII, Rule 1 and 10 of the CPC reads as under:

“ORDER VIII

Written statement, set-off and counter-claim

1. Written Statement. — *The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the 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 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.”

31. An examination of the aforesaid provision reveals that the ordinary statutory period prescribed for filing the written statement is 30 days from the date of service of summons. However, the Court may grant a discretionary extension of a period of 90 days, upon recording cogent reasons in writing and payment of such costs as the Court may deem appropriate for permitting the written statement to be placed on record.

32. The statutory scheme establishes an absolute bar beyond 120 days from the date of service of summons, whereafter the defendant shall forfeit the right to file a written statement, and the Court shall be precluded from allowing such written statement to be taken on record. This statutory prohibition is further reinforced by the proviso to Order VIII Rule 10 of the CPC, which categorically divests the Court of any jurisdiction to extend time beyond the period of 120 days, thereby creating an inflexible statutory limitation.

33. Order VIII Rule 10 of the CPC empowers a Civil Court to pass a judgment / order in the event the Defendant fails to file the written statement in accordance with Order VIII Rule 1 of the CPC.

34. Regarding the scope of the powers of a Court to render a judgment in the event the defendant fails to file a written statement within the prescribed timeframe, the Supreme Court in **C.N. Ramappa Gowda v. C.C. Chandregowda**: (2012) 5 SCC 265 has held as under:

“25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature



wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint.

26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.

27. However, if the court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit."

35. It is a settled position of law that Order VIII Rule 10 of the CPC is a permissive rule that provides the Court with two alternatives in case the defendant fails to file the written statement. *Firstly*, the Court can pronounce the judgment in favour of the plaintiff if the Court for reasons to be recorded is fully satisfied that there is no fact that needs to be proved in view of the deemed admission by the defendant by not filing the written statement.



Secondly, the Court may direct the parties to prove their case by adducing evidence. Thus, a mere failure on the part of the defendant to file the written statement does not relieve the plaintiff of its obligation to prove the case as the Court cannot pass a judgment in a mechanical manner by invoking Order VIII Rule 10 of the CPC.

36. The determination of whether to proceed with passing of a judgment against a defendant, who has failed to file a written statement is contingent upon the examination of the averments in the plaint and documentary evidence produced along with it. If the Court is satisfied that there is clear admission on part of the defendant, the Court may proceed to pronounce a judgment after recording due satisfaction that no material facts require adjudication or proof in the matter.

37. The legal position has been definitively settled that given the grave consequences flowing from the non-filing of a written statement, the amended provisions of the CPC are mandatory in nature and must be strictly complied with. Such statutory provisions cannot be circumvented, superseded, or dispensed with through recourse to the Court's inherent powers under Section 151 of the CPC, as has been held in the decision of *M/s SCG Contracts India Pvt. Ltd. (supra)*. Even the cases relied upon by the Respondent reiterate the same principles.

38. The learned Trial Court, in the impugned judgment, held that the Suit is liable to be decreed in favour of the Respondent in terms of Order VIII Rule 10 of the CPC as the Appellant failed to file the written statement after the lapse of 120 days from the date of service of summons. The learned Trial Court observed that the documents filed by the Respondent in support of its



case were of unimpeachable character and no two versions of the said documents are possible.

39. The impugned judgment records that the learned Trial Court examined the evidence relied upon by the Respondent filed alongwith the Plaint including the Board Resolution Plan appointing the Authorized Representative, Purchase Orders, Bank Statement, Demand Letter dated 04.03.2021 and the Reply Letter dated 23.03.2021 sent by the Appellant.

40. Upon appreciation of the said documentary evidence placed on record, the learned Trial Court observed that a Purchase Order dated 15.06.2018 was placed, and the same was signed by Mr. Manoj Saini on behalf of *M/s GS Marbles*, from which it can be inferred that he was the Proprietor of *M/s GS Marbles*. Further, the bank statements clearly establish that the advance amount was transferred to the account of *M/s GS Marbles*. In the Reply Letter, the Appellant has not disputed that the granite slabs were not supplied to the Respondent pursuant to the Purchase Order, despite receiving the advance payment from the Respondent, thereby resulting into dues that were to be paid by the Appellant to the Respondent.

41. The learned Trial Court has rightly held in the impugned judgement that the stand taken by the Appellant was hollow as there was no document produced regarding FIR against Mr. Rajaram Agarwal. Even the cancellation of registration of *M/s GS Marbles* was not placed on record. As the Purchase Order was signed by Mr. Manoj Saini on behalf of the Appellant, the contention of the Appellant with regard to Mr. Manoj Saini being an unskilled workman, Mr. Rajaram Agarwal had registered *M/s GS Marbles* for the purpose of evading GST, and that he had full control over the functioning of the said entity is an afterthought. Admittedly, the advance



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money was received by the Appellant and since no supply was made against the advance payment received by the Appellant, there was no question of fact to be determined for recovery of advance amount.

42. It is clear from the above discussion that there were no disputed questions of fact and the Respondent's case was unimpeachable. Therefore, the view taken by the learned Trial Court does not warrant interference by this Court.

43. Accordingly, the present Appeal is hereby dismissed, and the impugned judgment and decree is upheld. Pending applications also stand disposed of.

TEJAS KARIA, J

VIBHU BAKHRU, J

JULY 15, 2025/ 'N'