

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM
Friday, the 5th day of June 2026 / 15th Jyaishta, 1948
CM.APPL.NO.1/2024 IN ADML.S. NO. 2 OF 2023 J
OF HIGH COURT OF KERALA, ERNAKULAM

APPLICANTS/DEFENDANTS:-

1. INDIA STEAMSHIP COMPANY, 44 PARK STREET, KOLKATA- 700016, NOW OPERATING AT INDIA SEAMSHIP COMPANY (A DEVISION OF CHAMBAL FERTILIZERS AND CHEMICALS LTD.), 9/1 R. N, MUKHERJEE ROAD, KOLKATA - 700 001, REPRESENTED BY ITS GENERAL MANAGER.
2. CHAMBAL FERTILISERS AND CHEMICALS LTD. GADEPAN, DISTRICT KOTA, RAJASTHAN PIN-325208 REP. BY ITS MANAGING DIRECTOR.

RESPONDENTS/PLAINTIFFS:-

1. C.V. GANGADHARAN, S/O VELAPPAN, AGED 72 YEARS, ABHAYAM, PALAKKADA ROAD, EDAKKAD, KOZHIKODE-673005, NOW RESIDING AT 'NAGILA', PRANANAM NATURAL CURE HOSPITAL, KODAPPANAKKUNNU P.O., TRIVANDRUM-695043.
2. M.P. SHOBHANA, W/O. C.V. GANGADHARAN, S/O. VELAPPAN, ABHAYAM, PALAKKADA ROAD, EDAKKAD, KOZHIKODE - 673005.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to condone the delay of 76 days occasioned in filing the written statement of the defendants and accept the written statement into file.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of M/S. SNEHA RAJIV, P.F.ROSY, VINAYAK MOHANDAS, MAHESH BHANU S.Advocates for the Applicants/Defendants and of M/S. R.PARTHASARATHY, SEEMA, B KRISHNAN, Advocates for the respondents, the court passed the following:

CR**M.A.ABDUL HAKHIM, J.**-----
C.M.Appl.No.1/2024**in****Adml.S.No.2/2023**
-----**Dated this the 5th day of June, 2026****ORDER**

1. This is an Application filed by the Defendants Nos.1 & 2 in the above Admiralty Suit under Section 5 of the Limitation Act, 1963, to condone the delay of 76 days in filing their Written Statement and to accept the Written Statement into the file.
2. This Application was originally allowed by this Court as per Order dated 30.09.2024. Thereafter the Respondents/Plaintiffs filed Review Petition No.735/2025 to review the said Order contending that the claim is of a commercial nature and in such case, the Written Statement ought to have been filed within 120 days from the date of service of summons and the

delay in filing the Written Statement could not be condoned by this Court going by the provisions of the Commercial Courts Act, 2015. Since the said contention was not considered while passing the Order dated 30.09.2024, this Court recalled the Order dated 30.09.2024 as per the Order dated 05.11.2025 and hence this Application is to be considered afresh.

3. The explanation for the delay in the Affidavit in support of the Application is that the subject matter of the Admiralty Suit is several years old and hence time was taken in retrieving the old files from the office of the Defendant No.2; that the company had closed down its shipping business in the year 2017-18 and the concerned employees of the shipping division left the company; that all files pertaining to W.P.(Crl.) No.202/2009 and W.P(C) No.8863/2015 filed by the Plaintiffs before this Court in the same subject matter were inventorized and officials who worked in the shipping division are no longer with the company; that the earlier lawyer of the Applicants was elevated as judge of this Court and hence he could not appear; and that the delay

was occasioned for retrieving the files and appointing new lawyer.

4. The Respondents/Plaintiffs have filed Counter Affidavit dated 10.02.2026 opposing the condonation of delay in filing the Written Statement by the Defendants. It is contended that the Plaint was filed on 31.01.2023; that the summons was served on the Defendants on 22.02.2024 and the Application was filed 166 days after the service of summons to receive the Written Statement dated 01.08.2024 and that the suit broaches a commercial dispute and filing a Written Statement in 120 days from the date of service of summons is not negotiable. It is also contended that the delay is not properly explained and hence the delay is not condonable.
5. I heard the learned Counsel for the Applicants, Smt. Sneha Rajeev, and the learned Counsel for the Respondents, Sri.B. Krishnan.
6. The learned Counsel for the Applicants contended that the Respondents/Plaintiffs filed the suit invoking the provisions of

the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (hereinafter referred to as the 'Admiralty Act, 2017') and not under the Commercial Courts Act, 2015, and hence the proceedings are governed by the provisions in the Admiralty Act, 2017 and the Rules made thereunder and it is not governed by the Commercial Courts Act. There is no provision either in the Admiralty Act, 2017, or in the Rules made thereunder with respect to the filing of Written Statement. As per Section 12 of the Admiralty Act, 2017, the provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), shall apply in all the proceedings before the High Court insofar as they are not inconsistent with or contrary to the provisions of the Admiralty Act, 2017, or the Rules made thereunder. In such case, the provision applicable is the provision under Rule 1 of Order VIII CPC unamended by the schedule of the Commercial Courts Act, 2015. The original Proviso to Rule 1 of Order VIII CPC is applicable and not the Proviso amended by Para 4(D)(i) of the Schedule to the Commercial Courts Act. It is well settled

that the time limit provided in the original Proviso to Rule 1 of Order VIII CPC is only directory and a Written Statement filed after ninety days provided therein can be accepted condoning the delay. Between the Commercial Courts Act, 2015 and the Admiralty Act, 2017, the latter is a subsequent special statute, and hence, the provisions of the latter shall prevail over the former. In support of this contention, the learned Counsel cited the decision of the Hon'ble Supreme Court in ***Owners and Parties Interested in the Vessel M.V. Polaris Galaxy v. Banque Cantonale De Geneve [2022 SCC Online SC 1293]*** to substantiate the point that the Admiralty Act, 2017 would prevail over the Commercial Courts Act, 2015. Learned Counsel cited the decision of the High Court of Karnataka in ***Shipoil Limited v. M.T. Standorf [Order dated 17.01.2025 in I.A. No.1/2024 in Civil Petition No.23/2020]*** in which it is held that the Commercial Courts Act is a general statute and the Admiralty Act, 2017, is brought into effect thereafter as a special statute covering maritime claims and hence maritime claims are covered by the Admiralty Act, 2017. The learned

Counsel for the Applicants further contended that the C.M.C.P. No.7/2023 (Indigent) seeking permission to sue as indigent person was allowed only by the Order dated 30.09.2024 and hence the period prescribed for filing Written Statement is to be counted from the Order dated 30.09.2024. The Defendants have filed Written Statement on 06.08.2024, i.e., even before the date of allowing the Application to sue as an indigent person. In such case, even though the Defendants have sought for condonation of delay, there is no delay in filing Written Statement by the Defendants in the suit. Learned Counsel concluded her argument by praying to condone the delay and to accept the Written Statement as the delay is sufficiently explained by the Defendants.

7. *Per contra*, the learned Counsel for the Respondents contended that Section 2(1)(c)(iii) of the Commercial Courts Act, 2015, provides that a dispute arising out of the issues relating to Admiralty and Maritime Law is a commercial dispute. In such case, it is the Commercial Courts Act, 2015, which is

applicable to the proceedings under the Admiralty Act, 2017. Section 16 of the Commercial Courts Act, 2015, provides for amendments to the Code of Civil Procedure, 1908, in its application to commercial disputes. The original Proviso to Rule 1 of Order VIII CPC is substituted with the Proviso provided in Para 4(D)(i) of the Schedule to the Commercial Courts Act, 2015. It mandates the filing of the Written Statement not later than 120 days from the date of service of summons and that on expiry of 120 days from the date of service of summons, the Defendants shall forfeit the right to file the Written Statement and the Court shall not allow the Written Statement to be taken on record. It is explicitly clear that the language used in the said Proviso is mandatory in nature. Section 12 of the Admiralty Act, 2017, provides that the provisions of the Code of Civil Procedure shall apply in all the proceedings before the High Court insofar as they are not inconsistent with or contrary to the provisions of this Act or the Rules made thereunder. Rule 28 of the Kerala High Court

Admiralty (Jurisdiction and Settlement of Maritime Claims) Rules, 2019 (hereinafter referred to as the 'Admiralty Rules, 2019') also provides that the provisions of the Code of Civil Procedure, to the extent they are not repugnant to the said Rules, shall govern the proceedings in an Admiralty Suit/Appeal. There is no provision either in the Admiralty Act, 2017, or in the Admiralty Rules, 2019, which is inconsistent with or contrary to the Proviso to Rule 1 of Order VIII CPC as amended by the Commercial Courts Act, 2015. Hence, it is the Proviso to Rule 1 of Order VIII CPC, which is amended by the Commercial Courts Act, which is applicable to the proceedings under the Admiralty Act, 2017. The learned Counsel for the Respondents also relied on the decision of the Hon'ble Supreme Court in *M.V. Polaris Galaxy (supra)* and contended that the Commercial Courts Act, 2015, is applicable to the proceedings under the Admiralty Act, 2017. The learned Counsel relied on the decision of the Hon'ble Supreme Court in *Vijai Pratap Singh and Another v. Dukh Haran Nath Singh and Another*

[AIR 1962 SC 941] to substantiate the point that the suit commences from the moment an application to sue in *forma pauperis* as required by Order XXXIII of the Code of Civil Procedure is presented. The learned Counsel cited the decision of the Hon'ble Supreme Court in **SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Limited and Others [(2019) 12 SCC 210]** in which it is held that the Court cannot grant any further extension for filing the Written Statement beyond 120 days and it is to be held that the Defendant has forfeited his right to file Written Statement. The learned Counsel concluded his arguments by praying to dismiss the Application to condone delay.

8. I have considered the rival contentions and have perused the records.
9. Admiralty Suit No.2/2023 (Indigent) was filed on 31.01.2023 along with C.M.C.P. No.7/2023 to permit the Plaintiffs to sue as indigent persons. This Court issued summons in the C.M.C.P. to the Respondents by speed post on 14.02.2024. The

summons to the Respondent No.1 was not served and the endorsement is '*moved without instruction*'. Since the Defendants Nos.1 & 2 filed Vakalath on 01.08.2024, service of summons was endorsed as complete. There is nothing on record to show the date of service of summons on the Defendants. It is stated in the Affidavit in support of the Application that Defendant No.2 received the summons on 22.02.2024. Nothing is said about the date of service of summons on Defendant No.1. The Written Statement of the Defendants Nos.1 & 2 is seen filed on 06.08.2024. If the period is calculated from 22.02.2024, the Written Statement is filed on the 166th day from the date of service of summons. The period for filing Written Statement in Rule 1 of Order VIII CPC is 30 days from the date of service of summons. The same provision is applicable to the commercial suits also. The Applicants have calculated the delay as 76 days. The actual delay is 135 days. It appears that the Applicants have wrongly excluded the 90 days mentioned in the original Proviso to Rule 1 of Order VIII

CPC, from the total period of 165 days and included the date of service of summons also. In the case of ordinary suits, the outer limit for condoning delay is 90 days from the date of service of summons as per the original Proviso to Rule 1 of Order VIII CPC. In the case of commercial suits, the outer limit for condoning delay is 120 days from the date of service of summons as per the Proviso to Rule 1 of Order VIII CPC amended by the Commercial Courts Act, 2015. It is well settled that the period of 90 days for ordinary suits under the original Proviso to Rule 1 of Order VIII CPC is only directory *{Kailash v. Nanhku and Others [(2005) 4 SCC 480], Salem Advocate Bar Association, T.N. v. Union of India [(2005) 6 SCC 344], etc.}* and that the period of 120 days for commercial suits under the amended Proviso to Rule 1 of Order VIII CPC is mandatory *[SCG Contracts (India) Private Limited (supra)]*. If the Commercial Courts Act, 2015, is applicable, the delay of 135 days in filing the Written Statement is not condonable, as the condonable delay after the prescribed period is only 90 days. If the Commercial Courts Act,

2015 is not applicable, the delay of 135 days in filing the Written Statement can be condoned, if the delay is sufficiently explained.

10. The question to be considered is whether the Commercial Courts Act, 2015, is applicable to the Admiralty Suits filed under the Admiralty Act, 2017.

11. While trying an Admiralty Suit under the Admiralty Act, 2017, this Court exercises the Admiralty jurisdiction of this Court. From the very beginning, Admiralty jurisdiction is conferred and exercised only by the three chartered High Courts of Judicature at Calcutta, Bombay and Madras established under the Letters Patent of 1865. By the pronouncement of the landmark decision in ***M.V. Elisabeth and Others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa [AIR 1993 SC 1014]*** by the Hon'ble Supreme Court, it is declared that all High Courts possess inherent admiralty jurisdiction. With the introduction of the Admiralty Act, 2017, admiralty jurisdiction is available only to the nine High Courts of the coastal states in

India or any other High Court notified by the Central Government, specified in the definition of High Court under Section 2(1)(e) therein. It was never conferred on or exercised by any Court inferior to the High Court. Even during the period between the introduction of the Commercial Courts Act, 2015, and the introduction of the Admiralty Act, 2017, it was the High Courts which had been exercising the admiralty jurisdiction and not the commercial courts established under the Commercial Courts Act, 2015. Irrespective of the introduction of the Commercial Courts Act, the High Court continued to exercise the admiralty jurisdiction on the basis of the decision of the Hon'ble Supreme Court in *M.V. Elisabeth (supra)*. Section 2(1)(c)(iii) of the Commercial Courts Act, 2015 provides that a dispute arising out of the issues relating to Admiralty and Maritime Law is a commercial dispute. It does not confer admiralty jurisdiction on a commercial court. As per Section 3 of the Admiralty Act, 2017, the admiralty jurisdiction is exercisable solely by the High Courts. The High Court

exercises admiralty jurisdiction with respect to any question on the maritime claims specified under Section 4 of the Admiralty Act, 2017. The High Court can exercise admiralty jurisdiction for the arrest of vessel *in rem* under Section 5 or for an action *in personam* under Section 6 of the Admiralty Act, 2017, only in respect of a maritime claim referred under Section 4 therein. Commercial dispute defined under Section 2(1)(c)(iii) of the Commercial Courts Act, 2015, does not include a maritime claim. The Respondents also have filed the present Admiralty Suit invoking the provisions of the Admiralty Act, 2017, and the provisions of the Commercial Courts Act, 2015, are not invoked.

12. Assuming that the issues relating to admiralty law and maritime law specified under Section 2(1)(c)(iii) of the Commercial Courts Act, 2015, cover maritime claims, it has become redundant on the introduction of a subsequent special enactment providing admiralty jurisdiction for dealing with maritime claims. There is no reference to the Commercial

Courts Act, 2015, in the Admiralty Act, 2017. If the claim in a suit is a maritime claim defined under Section 4 of the Admiralty Act, 2017, it is exclusively triable before the specified High Courts and not before any other Court.

13. Section 12 of the Admiralty Act, 2017, provides that the provisions of the Code of Civil Procedure shall apply in all the proceedings before the High Court insofar as they are not inconsistent with or contrary to the provisions of this Act or the rules made thereunder. Rule 28 of the Admiralty Rules, 2019, also provides that the provisions of the Code of Civil Procedure, to the extent they are not repugnant to the said Rules, shall govern the proceedings in an Admiralty Suit/Appeal. There is no provision either in the Admiralty Act or in the Rules which is inconsistent with or contrary to the Proviso to Rule 1 of Order VIII CPC. Hence, it is the original Proviso to Rule 1 of Order VIII CPC which is applicable to the Written Statement in an Admiralty Suit filed under the Admiralty Act, 2017. Since the outer limit of 90 days specified in the original Proviso to

Rule 1 of Order VIII CPC is only directory, the delay in filing the Written Statement can be condoned if this Court is satisfied with the explanations which are shown in the Application. The decision in *M.V. Polaris Galaxy (supra)* is rendered by the Hon'ble Supreme Court in a different context and the question of applicability of the provisions of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015, to the Admiralty Suits under the Admiralty Act, 2017, is not considered in the said decision.

14. It is true that the delay calculated by the Applicant is not correct and the prayer is to condone delay of 76 days whereas the actual delay is 135 days. Nevertheless, there is a prayer to accept the Written Statement in the Application. Hence, if this Court is satisfied with the explanation for the delay, the Written Statement can be ordered to be accepted. The suit is filed on 31.01.2023. The Plaintiffs are claiming compensation with respect to the missing of their son from the vessel of the Defendants on 08.03.2009. It is stated that the company closed

its shipping business in the year 2017-18 and the employees concerned left the organisation. The time was taken to retrieve the old files relating to the subject matter of the suit which is several years old. The only vague statement in the Counter Affidavit is that the delay is not properly explained. The aforesaid specific averments in the Application are not denied. Considering these circumstances, I am of the view that the delay in filing the Written Statement by the Applicants/Defendants is well explained to the satisfaction of this Court and hence the Written Statement can be ordered to be accepted.

15. Accordingly, the above C.M. Application is allowed condoning the delay in filing the Written Statement by the Applicants/Defendants Nos.1 and 2 and ordering to accept the Written Statement filed by them.

Sd/-

**M.A.ABDUL HAKHIM
JUDGE**

Shg/