



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 28TH DAY OF JULY 2026 / 6TH SRAVANA, 1948

OP(C) NO. 2988 OF 2025

AGAINST THE ORDER DATED 13.11.2025 IN IA 23/2025 IN
CS NO.36 OF 2023 OF ASSISTANT SESSIONS COURT/PRINCIPAL
SUB COURT / COMMERCIAL COURT, KOZHIKODE

PETITIONER(S)/PETITIONER/DEFENDANT NO.1:

SUBIN BACKER
AGED 39 YEARS
SANGEETHA HOUSE, METHOTTUTHAZHAM, KOMERI POST,
VALAYANAD, KOZHIKODE, PIN - 673007

BY ADVS.
SRI.P.JERIL BABU
SRI.SRINATH GIRISH

RESPONDENT(S)/RESPONDENTS/RESPONDENTS/DEFENDANTS 3 TO
6/PLAINTIFFS 1 TO 3:

- 1 AXIS BANK LTD.
REGISTERED OFFICE, THIRD FLOOR,
LIGAPLEX BUILDING, NO.1 PLOT 1 T.5,
AIROLI KNOWLEDGE PARK, AIROLI,
NAVI MUMBAI, PIN - 400708
- 2 THE MANAGER AXIS BANK LTD.
CITY PLAZA, Y.M.C.A CROSS ROAD, KASABA
VILLAGE, KALATHINKUNNU DESOM, KOZHIKODE.,
PIN - 673001



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- 3 THE FEDERAL BANK LTD.
NADAKKAVU WEST BRANCH, KACHERI VILLAGE,
NADAKKAVU POST, KOZHIKODE TALUK., PIN - 673011
- 4 STATE BANK OF INDIA
WEST HILL BRANCH, KANNUR ROAD, POST WEST HILL,
KACHERI VILLAGE, KOZHIKODE TALUK.
REP. BY ITS BRANCH MANAGER., PIN - 673005
- 5 NITHIN PREMARAJ M
AGED 38 YEARS
SREEDEVI HOUSE, KANNADIKKAL, VENGARI POST,
VENGARI VILLAGE, KOZHIKODE TALUK, PIN - 673010
- 6 HAREESAN K.P
AGED 48 YEARS
KANNOOTHPOYIL HOUSE, KODIYURE POST,
KALLACHI VILLAGE, KOZHIKODE DISTRICT,
PIN - 673515
- 7 M/S. GIANT ENTERPRISES
REGD. FIRM DOOR NO. 102/3,
ATHANIKKAL, WEST HILL POST, KOZHIKODE,
REP. BY ITS PARTNER, NITHIN PREMRAJ.,
PIN - 673005

BY ADVS.
SRI.T.K.RAJESH KUMAR
SRI.M.R.ANISON
SRI.V.V.SURENDRAN
SRI.P.A.HARISH
SMT.APOORVA RAMKUMAR

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
28.07.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**“C.R”****EASWARAN S., J**

O.P.(C) No.2988 of 2025

Dated this the 28th day of July, 2026**JUDGMENT**

The first defendant in a commercial suit has filed the present Original Petition questioning the order (Ext.P7) passed by the Commercial Court, Kozhikode, refusing to accept his plea for filing of an additional written statement on the ground that since the mandatory period for filing the written statement is 120 days, no additional written statement can be filed beyond the said period. This order is challenged on various grounds including the ground that there is complete non-application of mind on the part of the Commercial Court. What is pointed out is that the amendments brought to the Code of Civil Procedure, 1908 by introduction of the schedule to Section 16 of the Commercial



Courts Act, 2015, do not affect the provisions of Order VIII Rule 9 of the Code of Civil Procedure, 1908. Before this Court divergent views of two high courts are placed. One is the view rendered by the Delhi High Court holding that the permission to file additional written statements can be granted by the Commercial Court, and the other by the Madras High Court taking a contrary view.

2. Heard Sri.P.Jeril Babu, the learned counsel for the petitioner, Sri.T.K.Rajeshkumar, the learned counsel for respondents 1 and 2, Sri.Sunil Shankar, the learned Standing Counsel appearing for third respondent, Sri.Anison R.M., the learned counsel appearing for the 4th respondent and Sri.P.A.Harish, the learned counsel appearing for the respondents 5 to 7.

3. Sri.P.Jeril Babu, learned counsel for the petitioner pointed out with reference to Section 16 of the Commercial Courts Act, that when the Parliament incorporated the specific provision in the schedule to the Act, the application of



provisions other than which has been expressly incorporated in the schedule, cannot be ruled out. He further pointed out that the High Court of Delhi had considered the same issue in ***Novartis AG and Another v. Natco Pharma Limited [Judgment dated 08.01.2025 in CS(COMM) 229/2019 and I.A.10756/2024]*** and held that since the wording of proviso to Order VIII Rule 1 of the Code of Civil Procedure and Order VIII Rule 9 being distinct, the applicability of Order VIII Rule 9 cannot be ruled out insofar as a commercial suit is concerned. Thus, the application filed by the petitioner to receive the additional written statement could not have been rejected by the Commercial Court. He further pointed out that when the defendant has delivered his defense within the mandatory period as prescribed under the proviso to Rule 1 to Order VIII of the Code of Civil Procedure, his right to file an additional written statement under Rule 9 to Order VIII cannot be foreclosed.

4. *Per contra*, Sri.P.A.Harish, the learned counsel



appearing for respondents 5 to 7 and the counsel appearing for the other respondents are unison in their submissions that the Commercial Court Act, 2015, being a special statute, will have an overriding effect in terms of Section 21 of the Act. It is further pointed out that the applicability of Rule 9 of Order VIII must be read along with Rule 1 of Order VIII. The defendant, no doubt, is entitled to file an additional written statement but the entitlement to file the additional written statement should also be within the framework of the proviso to Rule 1. Thus, it is pointed out that if the mandatory period of 120 days has not expired, in such circumstances alone the defendant is entitled to seek leave under Rule 9 to file additional written statements. In support of his contentions, he relied on the decision of the Single Bench of the Madras High Court in *Sri.Gokulam Hospital Pvt. Ltd. V. M/s. Canadian Crystalline Water India Limited [CRP 1807 of 2025 and CMP 12744 of 2025, delivered on 17.07.2026]*. It is further pointed out that the reason stated in Ext.P5



application would show that the attempt made by the petitioner is to amend the written statement in the guise of filing an additional written statement, which is impermissible under law.

5. I have considered the rival submissions made across the Bar and perused the impugned order.

6. The question which falls for consideration is whether the defendant has the right to file an additional written statement. To test the above plea, one needs to decipher closely the requirement under the proviso to Order VIII Rule 1 and the provisions of Rule 9. Order VIII Rule 1 and Order VIII Rule 9 are extracted for reference:

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.

9. ***Subsequent pleadings.***—No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

7. Section 16 of the Commercial Courts Act provides that the provisions of the Code of Civil Procedure shall, in their application to any suit in respect of a commercial dispute of a specified value, stand amended in the manner specified in the schedule. Turning to the schedule of the Commercial



Courts Act, one can find that Order VIII Rule 1 stands amended by insertion of the proviso which requires the defendants to deliver the defense within thirty days and an outer limit of 120 days, beyond which the defendant shall forfeit the right to file a written statement. Rule 10, as amended following the proviso mandates that no courts shall make an order to extend the time provided under Rule 1 for filing of the written statement.

8. What is contended before this Court is that inasmuch as the schedule to Section 16 does not incorporate the provisions of Order VIII Rule 9, its applicability is completely ruled out. This Court is unable to subscribe to the aforesaid contention. Section 21 gives the Act an overriding effect. The purpose of Commercial Court Act, 2015, as amended in 2018, shows the purpose for which it is enacted. The statement of objects of the 2018 amendment shows that the purpose of the amendment is for an early resolution of commercial dispute of even a lesser specified value to create a



positive image amongst the investors about the strong and responsive Indian legal system. That being so, if the argument of the petitioner is accepted it would mean that the defendant will be entitled to seek to file additional written statements beyond the specified period of 120 days.

9. In ***Novartis AG*** (*supra*) the Delhi High Court was called upon to consider the impact of Rule 9 of Order VIII. It was held that since the amendment made by the Commercial Courts Act did not touch the provision of Order VIII Rule 9, it can be inferred that the Parliament never wanted the applicability of Rule 9 of Order VIII to be taken out from the purview of the proceedings conducted in the commercial suit.

10. In ***Sri Gokulam Hospitals Private Limited*** (*supra*) the Madras High Court while considering the impact of the amendment held that Section 21 of the Commercial Courts Act establishes the overriding effect of the Legislature. It was further held that when the maximum time limit for filing a written statement is 120 days from the date of service of



summons, the right under Order VIII Rule 9 if at all can be exercised only within the specified time. Paragraph Nos.16 and 17 read as under:

“16. Under the Commercial Courts Act, the maximum time limit for filing a written statement is 120 days from the date of service of suit summons. The defendant must ordinarily file the written statement within 30 days. If the defendant fails to file within 30 days, the Commercial Court may allow it to be filed within the extended period of additional 90 days, provided valid reasons are recorded in writing by the Commercial Court. If the written statement is not filed within 120 days, the defendant forfeits their right to file it and the Court cannot extend the deadline under any circumstances. This strict 120 day rule also applies to a plaintiff in filing a reply statement in response to a defendant's counter claim.

17. An application under Order VIII Rule 9 of CPC is filed in a regular civil suit when a party needs to present subsequent pleadings (such as rejoinder, reply or additional written statement), after the initial written statement has been submitted. The leave as prescribed under VIII Rule 9 CPC cannot be granted to a party as a matter of right. The party seeking leave under Order VIII Rule 9 CPC should not seek such leave to introduce an entirely new or contradictory plea that prejudices the plaintiff. The relief granted under Order VIII Rule 9 CPC is a discretionary relief applicable to regular civil suits and not to commercial suits and even in civil suits of non-



commercial nature, the said power has to be exercised by the court with caution. The applicant must show reasonable cause for not having raised the plea earlier and ensure that it is not merely a tactic to delay the proceedings. The subsequent pleadings cannot also be disguised as a completely new suit or an attempt to completely retract the earlier stand taken.”

11. Amongst the two decisions placed before this Court, this Court is inclined to follow the decision of the Madras High Court, particularly because the acceptance of the view by the Delhi High Court will lead to an incongruous situation, especially when the Act provides that the right of the defendants to file a written statement stands forfeited after the expiry of 120 days. Since the Act provides that the defendant shall forfeit his right to file a written statement, the applicability of Order VIII Rule 9 should be considered in the touchstones of the purpose for which the proviso to Rule 1 of Order VIII has been incorporated. Otherwise, the purpose of proviso will stand obliterated.

12. That apart, this court is not for a moment



assuming that the defendant does not have a right to file an additional written statement. The defendant still will have the right to file an additional written statement, provided such application is filed within the statutory framework of 120 days. Beyond that period, this Court sees no reason as to why the benefit of Order VIII, Rule 9 should be extended to the case of a commercial suit. To hold otherwise would completely obliterate the purpose for which the Act was enacted and intended for fast-tracking cases of commercial disputes.

13. It is pertinent to note here that notwithstanding the bar created under proviso to Rule 1 of Order VIII, it is open for the Commercial Court to exercise its powers under Section 151 to require the defendant to file additional written statements, if the circumstances so warrant. Therefore, this Court is of the considered view that though the order impugned though bereft of any detailed reasoning still the conclusion reached is legally sustainable and no interference under Article 227 of



the Constitution of India is warranted. Hence for reasons supplemented by this Judgment, this Court finds that the order impugned is perfectly correct and does not call for any interference.

14. It is pointed out that the plaintiff's evidence was closed after examining the witness and the impugned order was passed. Since this Court has affirmed the impugned order, it is only appropriate to direct the Commercial Court to re-open the evidence of the plaintiff so as to enable the defendant to cross-examine the plaintiff on the merits of the claim. The Commercial Court shall pass suitable orders in this regard within 10 days from the day of receipt of the copy of this Judgment.

Ordered Accordingly.

Sd/-

EASWARAN S.
JUDGE



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APPENDIX OF OP(C) NO. 2988 OF 2025

PETITIONER EXHIBITS

- EXHIBIT P1 A TRUE COPY OF THE PLAINT DATED APRIL 2023, IN C.S. 36/2023 BEFORE THE COMMERCIAL COURT, KOZHIKODE
- EXHIBIT P2 A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANT AND 2 DATED JULY 2023 IN C.S. 36/2023 BEFORE THE COMMERCIAL COURT, KOZHIKODE
- EXHIBIT P3 A TRUE COPY OF THE A DIARY PROCEEDINGS OF THE COMMERCIAL COURT, KOZHIKODE IN C.S. 36/2023, DATED 19-07-2025.
- EXHIBIT P4 A TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE 2ND PLAINTIFF IN C.S. 36/2023 BEFORE THE COMMERCIAL COURT, KOZHIKODE, DATED 10-02-2025.
- EXHIBIT P5 A TRUE COPY OF THE I.A. 23/2025 IN C.S 36/2023 DATED 04-11-2025
- EXHIBIT P6 A TRUE COPY OF THE ADDITIONAL WRITTEN STATEMENT DATED 13-11-2025 FILED BY THE DEFENDANT NO. 1 IN C.S 36/2023.
- EXHIBIT P7 A TRUE COPY OF THE ORDER DATED 13-11-2025 I.A. 23/2025 IN C.S. 36/2023 ON THE FILE OF THE COMMERCIAL COURT, KOZHIKODE
- EXHIBIT P8 A TRUE COPY OF THE ORDER DATED 13-11-2025 I.A. 24/2025 IN C.S. 36/2023 ON THE FILE OF THE COMMERCIAL COURT, KOZHIKODE
- EXHIBIT P9 A TRUE COPY OF THE A DIARY PROCEEDINGS OF THE COMMERCIAL COURT, KOZHIKODE IN C.S. 36/2023, DATED 13-11-2025.