



2026:KER:74388

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT**

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 22ND DAY OF SEPTEMBER 2026 / 31ST BHADRA, 1948

OP(C) NO. 2678 OF 2026

**ARISING FROM ORDER DATED 10.08.2026 IN I.A.NO.1/2026 AND
I.A.NO.2/2026 IN C.S.NO.55/2025 OF COMMERCIAL COURT,
THIRUVANANTHAPURAM**

PETITIONERS/PETITIONERS/DEFENDANTS:

- 1 ANWAR BASHEER
AGED 48 YEARS
S/O. BASHEER, RESIDING AT SYEDNA, LIONS NAGAR,
MUNDAKKAL, KOLLAM ., PIN - 691001**
- 2 BASHEER
AGED 75 YEARS
S/O. SYED MOHAMMED, RESIDING AT SYEDNA, LIONS
NAGAR, MUNDAKKAL, KOLLAM., PIN - 691001**

**BY ADVS.
SHRI.K.B.PRADEEP
SMT.ANEETA NIRMAL MAMEN**

RESPONDENT/COUNTER PETITIONER/PLAINTIFF

**M/S ABAAN IMPEX PVT. LTD
TC 4/938, CHITRA NAGAR, OPP. KOWDIAR PALACE,
KOWDIAR POST, THIRUVANANTHAPURAM . REPRESENTED BY
THE MANAGING DIRECTOR, NAJEEB ABDUL SAHID , S/O.
ABDUL SAHID OF CITY VILLA HOUSE NO. 5, GAZETTED
OFFICERS NAGAR, AKG ROAD, PEROORKADA,
THIRUVANANTHAPURAM . NOW RESIDING AT T.C.
12/2782, ABAANS, NCC ROAD, AMBALAMUKKU, OPP.
AMBALATHIL HALL, PEROORKADA P.O,**



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THIRUVANANTHAPURAM., PIN - 695005

**BY ADVS.
SRI.ANOOP BHASKAR
KUM.AMMU MANOHARAN NARAYANAN
SMT.ANUGRA ANNA SHAJU**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 22.09.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



“C.R”

EASWARAN S., J.

O.P.(C)No.2678 OF 2026

Dated this the 22nd day of September, 2026

JUDGMENT

Two vexed questions arise in this original petition:

(1) Can the Commercial Court extend the period prescribed by the proviso to Rule 1 of Order VIII of the Code of Civil Procedure, 1908 (CPC) following an order under Rule 7 of Order IX ?

(2) Does Rule 7 of Order IX of the CPC govern the operation of the proviso to Rule 1 of Order VIII ?

2. Brief facts necessary for the disposal of the original petition are as follows.

The 1st respondent filed C.S.No.55/2025 before the Commercial Court, Thiruvananthapuram seeking a decree for recovery of Rs.5,63,58,045/-, together with interest at the rate of 18% per annum on the principal amount of Rs.4,59,37,219/-,



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from the date of suit till realisation. The defendants received the summons in the suit on 02.06.2025. Under the proviso to Rule 1 of Order VIII of the CPC, the defendants ought to have filed the written statement on or before 02.07.2025. Upon expiry of 30 days, an application was required to be filed to receive the written statement within 120 days, which expired on 02.10.2025. In the meantime, the defendants were set ex parte under Order IX Rule 6(1)(a) of the CPC on 09.09.2025. Later, the plaintiff filed an application seeking to amend the schedule to the plaint, and the Commercial Court ordered notice thereon. After receiving notice, the defendants/petitioners entered appearance on 29.11.2025 and filed their vakalath. However, on the date of their appearance, they did not file the written statement. The defendants filed a written statement on 27.01.2026, along with an application seeking to receive the same and set aside the ex parte order passed on 09.09.2025. The plaintiff opposed the application, and the Commercial Court rejected the application by Ext.P7 order, which is impugned in



the present original petition.

3. Heard, Sri.K.B.Pradeep - learned counsel appearing for the petitioners and Sri.Anoop Bhaskar - learned counsel appearing for the respondent.

4. Sri.K.B.Pradeep - learned counsel appearing for the petitioners, pointed out that, when an application under Order IX Rule 7 of the CPC is allowed, the defendants are placed in the same position as they were on the date on which the order under Order IX Rule 6(1)(a) was passed. In the present case, an order under Order IX Rule 6(1)(a) of the CPC was passed on 09.09.2025, on which date, the petitioners had a further period of 22 days available to them. Therefore, once an application is filed and the court considers the reasons and sets aside the ex parte order, the defendants are reverted back to their original position, and the defendants should be granted the remaining period available for filing the written statement. In the present case, the petitioners have attempted only such an exercise. Unfortunately, the trial court failed to appreciate the prayer of



the petitioners in its proper perspective.

5. *Per contra*, Sri.Anoop Bhaskar - learned counsel appearing for the respondent, pointed out that the defendants having received summons on 02.06.2025 were obliged to file the written statement on or before 02.07.2025. The outer period of 120 days expired on 02.10.2025, before which no written statement was filed. The petitioners were aware that their earlier counsel had neither filed the vakalath nor the written statement after receiving the summons on 02.06.2025. In fact, after receiving notice of the application, vakalath was filed on 29.11.2025 and no written statement was filed. Thereafter, the petitioners attempted to file their written statement along with the present application (Ext.P3) only on 27.01.2026. It is thus pointed out that the present attempt of the petitioners is only to delay and protract the proceedings in the commercial suit. The learned counsel further pointed out that, in the guise of making an application under Order IX Rule 7 of the CPC, the rigour of proviso to Rule 1 of Order VIII cannot be defeated. He further



pointed out that, to make a request under Order IX Rule 7, no formal application is required and that the defendants are not barred from participating in future proceedings in the suit. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in ***Om Prakash v Amarjit Singh*** [1988 KHC 667].

6. I have considered the rival submissions raised across the Bar and have perused the impugned order.

7. Order VIII Rule 1 of the Code of Civil Procedure, 1908, governs the filing of a written statement in a commercial suit. Section 16 of the Commercial Courts Act, 2015, inserted a proviso to Rule 1 of Order VIII requiring the defendant to file the written statement within 30 days from the date of service of summons. On application made by the defendant, the court may extend this period, but the written statement must be filed not later than 120 days from service of summons. Once that deadline expires, the defendant forfeits the right to file a written statement.



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8. In the present case, the defendants were served with the summons on 02.06.2025 and were therefore required to file their written statement on or before 02.07.2025, regardless of whether the suit was listed on that date. Admittedly, the defendants neither filed a written statement nor sought an extension of time. The maximum permissible period of 120 days expired on 02.10.2025.

9. In the meantime, on 09.09.2025, the petitioners were set ex parte under Order IX Rule 6(1)(a) of the CPC. On 29.11.2025, the defendants filed their vakalath, and on 27.01.2026, they filed their written statement along with an application under Order IX Rule 7 of the CPC. It is contended before this Court that, once an application under Order IX Rule 7 is allowed, the defendants are restored to the position they occupied on the date on which they were set ex parte. Accordingly, they should receive the benefit of any unexpired portion of the period available for filing their written statement. This argument is prima facie persuasive, as it cannot be



disputed that an order under Rule 7 of Order IX of the CPC restores the defendants to the position they occupied when an order under Order IX Rule 6(1)(a) was passed.

10. The flaw in the foregoing argument lies in the misconception as to how Order IX Rule 7 operates in proceedings in a commercial suit. The argument might have merit in an ordinary suit. In a commercial suit, however, the procedure is strictly governed by the proviso to Rule 1 of Order VIII of the CPC, which imposes an outer limit of 120 days. Had the defendants, within 22 days from 09.09.2025, filed an application under Order IX Rule 7 of the CPC together with an application seeking leave to receive their written statement, they might have been able to restore the proceedings to the position they occupied on the date on which they were set ex parte.

11. In the present case, it is indisputable that, after the defendants were set ex parte on 09.09.2025, the vakalath was filed only on 29.11.2025. Thereafter, the petitioners filed an



application to accept the written statement on 27.01.2026, along with an application to set aside the ex parte order, under Order IX Rule 7 of the CPC.

12. Even if the petitioners are restored to the position they occupied on 09.09.2025 upon the allowing of their application under Rule 7 of Order IX of the CPC, the written statement was filed only on 27.01.2026, well beyond the 120 days period prescribed by the proviso to Rule 1 of Order VIII of the CPC. Accepting the contention of the petitioners and permitting the defendants to contest the case on the basis of a written statement filed beyond that period would render the amendment introduced by Section 16 of the Commercial Courts Act, 2015 meaningless and otiose. Such an interpretation cannot be sustained while construing the proviso to Rule 1 of Order VIII of the CPC.

13. Moreover, the procedure under Rule 7 and Rule 6(1) (a) of Order IX of the CPC cannot govern the determination of the outer limit of 120 days in commercial suits. By inserting a



proviso to Rule 1 of Order VIII of the CPC, Parliament established a distinct procedure for commercial suits. Order IX Rule 7 cannot operate as an exception to the proviso to Rule 1 of Order VIII.

Viewed in this light, this Court is unable to accept the contentions advanced on behalf of the petitioners. No grounds therefore exist to interfere with the impugned order in the original petition. The original petition is accordingly dismissed. This dismissal, however, shall not preclude the petitioners from participating in the trial or for cross-examining the plaintiff on the issues raised in the plaint, subject to the exception set out above.

Sd/-

EASWARAN S, JUDGE



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APPENDIX OF OP(C) NO. 2678 OF 2026

PETITIONER EXHIBITS

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| Exhibit P-1 | TRUE COPY OF THE PLAINT IN C.S NO. 55 OF 2025 IN THE FILE OF COMMERCIAL (SUB COURT) THIRUVANANTHAPURAM.DATED 19.05.2025 |
| Exhibit P-2 | TRUE COPY OF THE WRITTEN STATEMENT IN C.S NO. 55 OF 2025 DATED 24.01.2026 |
| Exhibit P-3 | TRUE COPY OF I.A NO. 2 OF 2025 IN C.S NO. 55 OF 2025 |
| Exhibit P-4 | TRUE COPY OF THE OBJECTION FILED AGAINST EXT.P-3 DATED 18.05.2026 |
| Exhibit P-5 | TRUE COPY OF I.A NO.1 OF 2026 IN C.S NO. 55 OF 2025 DATED 27.01.2026 |
| Exhibit P-6 | TRUE COPY OF THE OBJECTION DATED 18.05.2026 TO EXT.P-5 APPLICATION, |
| Exhibit P-7 | TRUE COPY OF THE ORDER I.A NO.1 OF 2026 AND I.A NO. 2 OF 2026 IN C.S. NO. 55 OF 2025 IN THE FILE OF THE COMMERCIAL COURT OF THIRUVANANTHAPURAM)DATED 10.08.2026 |