
Non-Filing of Written Statement Bars Reference to Arbitration under Section 8 of the Arbitration Act: Delhi High Court Clarifies

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Introduction

In *R. Santish v. One97 Communications Ltd.* [RFA (Comm) 130 of 2025], the Delhi High Court dismissed an appeal against a decree for recovery of a refundable security deposit, holding that once a defendant's right to file a written statement is closed, an application under Section 8 of the Arbitration and Conciliation Act, 1996 cannot be entertained. The High Court affirmed that a party cannot use procedural devices such as applications under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") to circumvent the closure of defence or retrieve lost procedural opportunities.

The judgment is notable for reaffirming two well-established yet often disputed propositions. First, that commercial parties must adhere to the timeframes outlined in procedural law, and second, that arbitration cannot serve as a fallback once a party fails to take prompt procedural steps in civil litigation. The decision also confirms that when a plaintiff presents uncontested evidence and the defendant offers no reply or cross-examination, the suit is likely to be decreed as requested, especially in contractual recovery cases.

Brief Facts

The appellant, One97 Communications Ltd., entered into a business arrangement with the respondent, R. Santish, under which the respondent paid a security deposit of Rs. 3,50,000 to the appellant. Following the termination of the arrangement, the respondent requested a refund of the deposit. As no refund was provided, the respondent filed a civil suit before the Commercial Court to recover the amount along with interest.

Upon receiving the summons, the appellant appeared and filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint on the ground that the dispute was covered by an arbitration clause. No written statement was filed within the prescribed period. By an order dated 16 February 2023, the Commercial Court dismissed the application under Order VII Rule 11 of the CPC and directed the matter to proceed in accordance with law.

Since no written statement was filed within the statutory period, the Commercial Court closed the appellant's opportunity to submit it. The respondent presented evidence, which remained uncontested. No cross-examination took place, and no rebuttal evidence was provided. The suit was decreed in favour of the respondent for the full amount claimed, along with costs and interest.

The appellant challenged the decree on appeal under Section 96 of the CPC, arguing that the matter was arbitrable and that the suit should have been dismissed in light of the arbitration agreement between the parties.

Issues and Submissions

The primary issue before the High Court was whether a party that had failed to file a written statement within the statutory period prescribed under the Commercial Courts Act, 2015 could, at a later stage, seek to invoke an arbitration clause by way of defence. A related issue concerned the permissibility of entertaining such a defence in appeal after a decree had been passed on the basis of un rebutted evidence.

The appellant submitted that the transaction between the parties was governed by an agreement containing an arbitration clause, and that the suit was therefore not maintainable. It was argued that the Commercial Court ought to have referred the matter to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. The appellant contended that the failure to file a written statement should not preclude the enforcement of a valid arbitration agreement, particularly when a preliminary objection had already been raised by way of an application under Order VII Rule 11 of the CPC.

It was further submitted that the High Court should have exercised discretion to consider the defence on merits, given that the decree was passed without adjudicating the actual contractual dispute.

The respondent opposed the appeal on the ground that the appellant had deliberately chosen not to file a written statement, despite being granted sufficient time. It was submitted that the Commercial Courts Act mandates strict adherence to timelines and that the statutory period of 120 days for filing a written statement is not extendable. As a result, the appellant's right to contest the claim had been forfeited in law.

It was also argued that the suit had been decreed only after the respondent led evidence, and the appellant had failed to either cross-examine or adduce rebuttal evidence. The respondent submitted that invocation of the arbitration clause at this stage was nothing more than an attempt to delay the execution of a lawful decree.

Findings of the High Court

The High Court upheld the decree and dismissed the appeal, emphasising that the statutory timelines under the Commercial Courts Act must be respected. It held that once the period of 120 days for filing a written statement lapses, the defendant loses the right to contest the suit on merits. The High Court observed that allowing a party to invoke arbitration after having defaulted on such a procedural requirement would defeat the purpose of the legislative framework designed to ensure timely and efficient resolution of commercial disputes.

The High Court distinguished between raising a preliminary objection and preserving substantive rights under an arbitration agreement. It noted that although the appellant had filed an application under Order VII Rule 11 of the CPC, it had made no attempt to comply with the requirement of filing a written statement. The procedural default could not be cured by invoking the arbitration clause at a later stage, especially when the trial had proceeded in the absence of any contest.

In the High Court's view, the decree passed by the Commercial Court was based on un rebutted and credible evidence. The respondent had discharged the burden of proof by producing documents and oral evidence, which remained unchallenged. The High Court reaffirmed that in such circumstances, the trial court was justified in decreeing the suit as prayed for.

The appellate court also rejected the suggestion that the arbitration clause survived independently of the procedural failure. It reiterated that arbitration is a consensual process, but its invocation within judicial proceedings is governed by procedural law. A party cannot bypass procedural rules and seek to revive arbitration after having abandoned its right to defend the claim in civil proceedings.

Comment

The decision in *R. Santish v. One97 Communications Ltd. (supra)* clearly affirms the procedural discipline introduced by the Commercial Courts Act, 2015. It emphasises that the deadlines for filing a written statement in commercial disputes are not optional but mandatory, and non-compliance results in losing the right to defend the suit. This stance has been consistently upheld by the Supreme Court and various High Courts to ensure the swift resolution of commercial claims.

The judgment also addresses a common litigation tactic, where parties attempt to revive procedural rights by invoking arbitration at a belated stage. By rejecting such an approach, the High Court has made it clear that arbitration cannot be used as a procedural refuge once a party has defaulted on its obligations under civil procedure. The right to seek reference to arbitration must be exercised in a timely and bona fide manner, especially when judicial proceedings are already in progress.

Equally important is the High Court's approach to unchallenged evidence. The respondent provided evidence by way of an affidavit and submitted supporting documents. Since there was no cross-examination or rebuttal, the High Court had little option but to accept the evidence as uncontested. This highlights the idea that procedural default can have substantive effects, and courts are justified in relying on the existing record when one party chooses not to participate.

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