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

\+ FAO(OS) (COMM) 129/2025 & CM APPL. 51255/2025

NEXT GEN PHARMA INDIA PRIVATE LIMITED THROUGH AUTHORIZED REPRESENTATIVE MR KANWALDEEP SINGH CHADHA & ANR. .....Appellants

Through: Mr. Rajesh Yadav, Sr. Adv. with Mr. Vikas Arora and Ms. Radhika Arora, Advs.

versus

CD PHARMA INDIA PRIVATE LIMITED .....Respondent

Through: Mr. Krishna Vijay Singh, Mr. Pradyuman Sewar and Ms. Pragya Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 08.09.2025

C. HARI SHANKAR, J.

1. The present appeal assails order dated 7 July 2025 passed by a learned Single Judge of this Court in OA 8/2019 in CS (COMM) 912/2018[1]. OA 8/2019, in turn, assailed an order dated 18 December 2018, passed by a learned Joint Registrar of this Court, dismissing an application filed by the appellants, as the defendants in the suit, for condonation of delay in filing the written statement.

[1] "the suit" hereinafter

2. The learned Single Judge has, by the order under challenge, upheld the decision of the learned Joint Registrar, refusing to take the written statement of the appellants on record.

3. The learned Joint Registrar and the learned Single Judge have concurrently held that the written statement was filed beyond the maximum period of 120 days provided in the proviso to Order VIII Rule 1[2] of the Code of Civil Procedure 1908, as amended by the Commercial Courts Act 2015. Reliance has also been placed, by the learned Single Judge, on the judgment of the Supreme Court in ***SCG Contracts v K S Chamankar Infrastructure***[3].

4. Mr. Rajesh Yadav, learned Senior Counsel for the appellants, fairly does not contest the position that the written statement, if it has been filed beyond the permissible period of 120 days, cannot be taken on record. His contention is, however, that the written statement must be treated as having been filed within the permissible period of 120 days as envisaged in the proviso to Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act.

5. Summons in the suit were admittedly served on the appellants-defendants on 29 May 2018 and written statement was filed by the defendants on 27 September 2018. The learned Joint Registrar as well

[2] **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 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.

[3] **(2019) 12 SCC 210**

as the learned Single Judge in the impugned orders have concurrently held that first day for reckoning the period of 120 days would be 30 May 2018 and, thus reckoned, the 120th day would be the 26 September 2018. The written statement having been filed a day thereafter i.e. 27 September 2018, has not been permitted to be taken on record.

6. Mr. Yadav's contention is that the 120th day would not be 26 September 2018 but 27 September 2018. He predicates his contention on Section 9[4] of the General Clauses Act read with Section 12(1)[5] of the Limitation Act.

7. Mr. Yadav's contention is that the use of the word "from" in conjunction with the words "the date of service of summons" in the proviso to Order VIII Rule 1 of the CPC, read with Section 9 of the General Clauses Act, would require the limitation period to be computed w.e.f. 30 May 2018 which would, therefore, be the *terminus a quo* for reckoning limitation.

8. He, thereafter, relies on Section 12(1) of the Limitation Act to submit that the day from which the period of limitation commences would have to be excluded, meaning that 30 May 2018 would have to be excluded while computing the period of 120 days under the proviso

[4] **9. Commencement and termination of time**.—(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".
(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

[5] **12. Exclusion of time in legal proceedings**.—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

to Order VIII Rule 1 of the CPC. Thus reckoned, Mr. Yadav's contention is that the first day of the 120-day period within which the written statement could be filed under Order VIII Rule 1 would not be 30 May 2018 but 31 May 2018, from which date, if 120 days is counted, 27 September 2018 would be the 120th day.

9. Mr. Yadav has placed reliance, to support his submissions, on the judgments of the Supreme Court in ***Saketh India Ltd v India Securities Ltd***[6] and ***ECON Antri Ltd v ROM Industries Ltd***[7] as well as ***Haru Das Gupta v State of West Bengal***[8], which is cited and relied upon in ***ECON Antri Ltd***.

10. We have considered the submissions of Mr. Yadav, and we must confess that his argument is ingenious and may appear, at first glance, to be a permissible manner of construing Section 9 of the General Clauses Act read with Section 12 of the Limitation Act.

11. Essentially, if the submissions of Mr. Yadav are to be accepted, it would result in appellants being granted not one, but the benefit of exclusion of two days while computing limitation. The first would be the day on which summons is served i.e. 29 May 2018, and the second would be the next day, i.e. 30 May 2018.

12. On a careful reading of Section 9 of the General Clauses Act and Section 12 of the Limitation Act, however, we do not feel that the

[6] **(1999) 3 SCC 1**
[7] **(2014) 11 SCC 769**
[8] **(1972) 1 SCC 639**

manner in which Mr. Yadav interprets and applies these provisions, though unquestionably attractive, is legally correct.

13. Moreover, as we have occasion to observe hereinafter, this interpretation goes against the understanding of the provisions even on the decisions on which Mr. Yadav himself seeks to place reliance.

14. That apart, a bare reading of Section 9 of the General Clauses Act reveals that, where the word "from" is used in the statutory provision, dealing with a series of days, the import of such use would be that the day with respect to which the word "from" is used would be excluded. Applying this principle to the proviso to Order VIII Rule 1 of the CPC, the day which would be excludible, as per Section 9 of the General Clauses Act, *would be the day on which summons are served*, as the expression uses the word "from the date of service of summons". A bare reading of Section 9 of General Clauses Act along with the proviso to Order VIII Rule 1 of the CPC, therefore, makes it clear that the *date of service of summons alone* would be excludible, *and not the next day*.

15. Thus far, Mr. Yadav, too, agrees that Section 9 of the General Clauses Act applies only so far, and no further.

16. Mr. Yadav's contention is, however, that, once the date of service of summons stands excluded by applying Section 9 of the General Clauses Act, if we apply Section 12 of the Limitation Act *in succession*, the appellants would be additionally entitled to exclude

the next day, as that would then be the first day for starting of limitation.

17. This construction, to our mind, is not acceptable.

18. The period of limitation, even as per proviso to Order VIII Rule 1 of CPC, is 120 days from the date of service of summons. This is fixed, and immutable. It is not as though there are two periods of limitation, one applicable for Section 9 of the General Clauses Act and the second applicable for Section 12 of the Limitation Act. While applying either of the provisions, the period of limitation remains the same, i.e. 120 days from the date of service of summons. The date of service of summons is one and only one, which is 29 May 2018.

19. The fallacy in Mr. Yadav's arguments, as we see it, is in presuming that there is a second period of limitation which comes into being by operation of Section 9, which commences, not from the date of service of summons but from the next day. In other words, Mr. Yadav essentially submits that Section 9 *shifts* the *terminus a quo* of limitation and brings into existence an entirely new limitation period, commencing from 30 May 2018, to which one can now, *independently*, apply Section 12 of the Limitation Act, and exclude the 30th.

20. In our considered opinion, that is not the import of Section 12. The period of limitation *remains* 120 days from the date of service of summons, whether it is for application of Section 9 of the General

Clauses Act or Section 12 of the Limitation Act. By applying Section 9 of the General Clauses Act, as the provision uses the word "from", the date of service of summons would be excluded and the period of 120 days would be reckonable from the next day, i.e. 30 May 2018. The same consequence would follow by applying Section 12 of the Limitation Act, as the day from which limitation is to be reckoned, *which is the date of service of summons even as per the expressed wording of proviso to Order VIII Rule 1*, would be excludible and the first day from which the limitation would have to be computed would be 30 May 2018.

21. Section 9 of the General Clauses Act, and Section 12 of the Limitation Act, therefore, apply to exclude *the same day*, i.e., 29 May 2018, being the first day of limitation.

22. The decisions on which Mr. Yadav places reliance, to our mind, support the interpretation that we have placed.

23. In ***Saketh India Ltd***, the provisions with which the Supreme Court was concerned, were the following:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account.-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend

to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless:

> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
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> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
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> (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

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142. Cognizance of offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

> (a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
>
> (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;
>
> (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138."

24. Mr. Yadav has drawn our attention to concluding paras 7 and 8 of the judgment, which read thus:

> "7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall

> be excluded. Similar provision is made in subsection (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".
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> 8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. *So cause of action for filing complaint would arise from 15-10-1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995*. The result would be that the complaint filed on 15th November is within time."
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> (Emphasis supplied)

25. When one reads the afore-extracted paras 7 and 8 of the decision in ***Saketh India***, juxtaposed with Sections 138 and 142 of the Negotiable Instruments Act, with which the Supreme Court was concerned, the position that emerges is that the period of one month, under Section 142(b) is to be reckoned from the date on which the cause of action arises under clause (c) of the proviso to Section 138. The Supreme Court has held, in para 8 of the report, that the cause of action arose on 14 October 1995. As the provision used the expression "*from* the date on which the cause of action arises", the Supreme Court, by applying Section 9 of the General Clauses Act, excluded 14 October 1995 and held that the period of 30 days would commence from 15 October 1995.

26. Analogising the said reasoning to the present case, as the proviso to Order VIII Rule 1 states that 120 days is to be counted *from the date of service of summons,* the date of service of summons would be excludible and the period of 120 days would commence from the next day, i.e. 30 May 2018.

27. ***ECON Antri Ltd***, as we have noted, was a decision of three Hon'ble Judges of the Supreme Court, which was constituted as another two judge bench of the Supreme Court had opined that decision in ***Saketh India Ltd*** required reconsideration.

28. The three Judge Bench of the Supreme Court reaffirmed ***Saketh India Ltd.***

29. Insofar as the decision in ***Haru Das Gupta*** is concerned, we may extract paras 24 to 26 of ***ECON Antri Ltd***, which deal with the said decision, thus:

> "24. We shall now turn to ***Haru Das Gupta***, where this Court has followed the law laid down in the above judgments. In that case, the petitioner therein was arrested and detained on 5-2-1971 by order of the District Magistrate passed on that day. The order of confirmation and continuation, which has to be passed within three months *from the date of detention*, was passed on 5-5-1971. The question for decision was as to when the period of three months can be said to have expired. It was contended by the petitioner that the period of three months expired on the midnight of 4-5-1971, and any confirmation and continuation of detention thereafter would not be valid. This Court referred to several English decisions on the point apart from the above decisions and rejected this submission holding that *the day of commencement of detention, namely, 5-2-1971 has to be excluded.*
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> 25. The relevant observations of this Court read as under: (Haru Das Gupta case, SCC p. 64 1, para 5)

> "5. These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. *The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded.* (See ***Goldsmiths' Co. v West Metropolitan Railway Co***.[9]) This rule was followed in ***Cartwright v MacCormack***[10], where the expression ' fifteen days from the date of commencement of the policy ' in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in ***Marren v Dawson Bentley & Co. Ltd***[11]. , a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also ***Stewart v Chapman***[12] *and* ***North, In re, ex p Hasluck***[13].) Thus, *as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the fust day and to include the last day.* [See Halsbury 's Laws of England (3rd Edn.), Vol. 37, pp. 92 and 95.] There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."
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> 26. We have extensively referred to ***Saketh***. The reasoning of this Court in ***Saketh*** based on the above English decisions and decision of this Court in ***Haru Das Gupta*** which aptly lay down and explain the principle that where a particular time is given from a certain date within which an act has to be done, the day of the date is to be excluded, commends itself to us as against the reasoning of this Court in ***SIL Import, USA***[14] where there is no reference to the said decisions."

30. Here, again, the same principle has been applied by the Supreme Court. In ***Haru Das Gupta***, the petitioner-detenu was detained on 5 February 1971. The order of conformation and continuation was required to be passed within three months from the

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[9] **(1904) 1 KB 1**
[10] **(1963) 1 All ER 11 (CA)**
[11] **(1961) 2 QB 135**
[12] **1951) 2 KB 792**
[13] **23 (1895) 2 QB 264 (CA)**
[14] **SIL Import, USA v Exim Aides Silk Exporters, (1999) 4 SCC 567**

date of detention. The Supreme Court held that, in view of the expression "from the date of detention", the date of detention, i.e. 5 February 1971 had to be excluded, and, therefore, the order of conformation and continuation was required to be passed, at the latest, by the midnight of 4 May 1971.

31. These judgments, too, therefore, reinforce our view that the import of Section 9 of the General Clauses Act and Section 12 of the Limitation Act, when applied to the facts of the present case, would justify exclusion, while computing the period of 120 days, only the date of service of summons i.e. 29 May 2018.

32. Additionally, it was sought to be submitted that the delay of one day was occasioned because of the voluminous nature of the record. While we appreciate the difficulty that the appellants may have faced, we are constrained by the law laid down by the Supreme Court in ***SCG Contracts*** which does not enable us – or the learned Single Judge or the learned Joint Registrar – to grant any latitude beyond the period of 120 days envisaged in the proviso to Order VIII Rule 1 of the CPC.

33. Thus reckoned, the written statement, which was filed one day beyond 120 days, on 27 September 2018, was rightly not taken on record.

34. We, therefore, do not feel that the learned Single Judge, or the learned Joint Registrar, erred in the view that they took.

35. Accordingly, we find no merit in the present appeal, which is dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

SEPTEMBER 8, 2025/*dsn*