



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 94/2026

Pratibha Industries Ltd., Having Its Head Office At Office No. 1607/1608, 16Th Floor, Cyber One, Behind Odisha Bhawan, Plot No. 4 And 6 Sector-30A, Vashi, Navi Mumbai - 400703, Maharashtra. Through Its Authorised Signatory Satyanarayan Goswami Son Of Shri Onkar Goswami, Ageda Bout 41 Years, Resident Of 144, Rupavas Daravaja, Kakod Via Baneta, Kakod Tonk (Raj.).

----Petitioner

Versus

1. State Of Rajasthan, Through The Principal Secretary, Public Health And Engineering Department (Phed), Government Of Rajasthan, Government Secretariat, Jaipur (Raj.).
2. Chief Engineer (Projects), Public Health And Engineering Department (Phed), Jodhpur, Rajasthan.
3. Additional Chief Engineer (Projects), Public Health And Engineering Department (Phed), Barmer, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Ramit Mehta,
Mr. Tarun Dudia,
Mr. Aman Khan

For Respondent(s) : Mr. P.S. Chundawat,
Mr. Mayank Vyas

HON'BLE MR. JUSTICE SANJEEET PUROHIT

Order

Reportable

16/01/2026

1. Present writ petition is filed challenging order dated 20.12.2025, passed by learned Commercial Court No.1, Jodhpur in Civil Original Suit No.41/2022, rejecting application filed by petitioner under Order VIII Rule 9 of CPC seeking to place on





record the subsequent pleading (rejoinder) to the written statement was rejected.

Brief Facts

2. It is stated in the plaint that petitioner is a public limited company engaged in execution of large infrastructure projects. Pursuant to NIT No. 09/2011-12 issued by the Rajasthan Water Supply and Sewerage Management Board for execution and 10 years' O&M of the Barmer Lift Water Supply Project (Phase-II Part-A) on turnkey basis, the petitioner's bid was accepted and a contract dated 23.08.2012 for about ₹168 crores was awarded.

3. It was further stated that, under the contract, the respondents were required to provide full site access, timely approvals of drawings, designs, vendors, and QAPs, and to make payments in a timely manner. It was, however, alleged that the sites were handed over in a piecemeal and delayed manner; that statutory clearances (including Form-V and PAC) and various approvals were not accorded within the stipulated time; and that certain payments were subject to deductions towards mobilization advance, interest, and liquidated damages. It was contended that these circumstances had an impact on the progress of the project. It was also stated that requests for extension of time and revision of milestones were considered and granted on a provisional and short-term basis.

4. Finally, respondents rescinded the contract on 24.01.2018, forfeited the security deposit and proposed to get the balance work executed at the petitioner's risk and cost. After issuance of a fresh NIT in March 2019 and award of the remaining work to





another contractor, the petitioner, upon exhaustion of the contractual dispute-resolution mechanism, instituted a commercial suit in 2022 seeking declaration of termination of contract to be illegal and void and also so for recovery and damages.

5. The respondents filed their written statement raising preliminary objections and several factual and legal assertions. Suit proceedings went ahead and both parties adduced their evidences. After completion of evidence, M/s Kalinga Metalics Ltd. took over the petitioner's business as a going concern pursuant to liquidation proceedings. Learned Commercial Court by allowing application under Order XXII Rule 10 CPC permitted continuation of suit by the new management.

6. Thereafter, the petitioner filed an application under Order VIII Rule 9 CPC seeking permission to place on record rejoinder to rebut new and incorrect allegations, preliminary objections and distinct interpretations of clauses of the said contract said to be introduced in the written statement. The respondents opposed the application on the ground of delay.

7. By order dated 20.12.2025, learned Commercial Court rejected the application and refused to take the rejoinder on record on the ground that petitioners have preferred the said application at a highly belated stage i.e., after completion of evidence whereas respondents have already filed the written statement on 09.07.2024.

Submissions by Parties

8. Learned counsel for the petitioner submitted that Order VIII Rule 9 does not prescribe any specific period of limitation for filing





of a rejoinder. Therefore, the order passed by learned Commercial Court is erroneous in law, inasmuch as the said application has been rejected solely on the ground of delay, which by itself is not a valid ground for refusing rejoinder.

9. It was, therefore, contended that filing of the rejoinder had become necessary to explain new facts introduced by the respondent in the written statement, particularly in view of the fact that the amount involved in the suit would have a direct bearing on the public money as the new purchaser and the lender, is a consortium of 17 banks.

10. He further submitted that the Commercial Court failed to consider the parameters prescribed under Order VIII Rule 9 of the Code of Civil Procedure, as well as the settled legal position laid down in various judicial pronouncements governing the adjudication of applications under the said provision.

11. He stated facts pleaded in the rejoinder are not in any way changing the nature of suit and that the same was filed only to meet the averments raised in the written statement, which is essential for the proper and effective adjudication of the matter. Therefore, the application under Order VIII Rule 9 ought to have been allowed by the Learned Commercial Court. Counsel for petitioner placed reliance on **(i) Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally (2009) 15 SCC 528, (ii) Babu Bhai Kashyap v. Praful Chand Contractor 2012 SCC OnLine Raj 3801, (iii)Yogesh Tripathi v. Mangi Lal 2017 SCC OnLine Raj 3539, (iv)Mukut Raj Laxmi v. Jitendra Singh**





2015 SCC OnLine Raj 7054 and (v)Selvam@ Selvaraj v P.

Ashok CR No. 1803/2021.

12. Learned counsel for the respondent submitted that the order passed by the learned Commercial Court is well-reasoned and does not call for any interference by this Court. It was further contended that the petitioner is seeking to file the rejoinder merely as a device to delay the proceedings.

13. He further submitted that in paragraph 6 of the application filed under Order VIII Rule 9, the petitioner has categorically admitted that no new facts have been introduced in the written statement, therefore, there is no justification whatsoever for permitting the rejoinder to be taken on record.

14. Learned counsel for the respondent by placing reliance upon the judgment in **Datta v. Sonabai Ganpati Methe, 2023 SCC OnLine Bom 487**, submitted that a rejoinder/replication can be filed only in three eventualities enumerated therein, namely: (i) when required by law; (ii) when a counter-claim is raised or a set-off is pleaded by the defendant; and (iii) when the Court, in its discretion, directs or grants permission for filing such replication. Since none of the eventualities exist in the present case rejection of application was justified.

Analysis and Reasoning

15. Heard learned counsels appearing for the parties at length and perused the material on record.

16. A short question for adjudication has arisen in the present case as to whether rejection of petitioner's application for taking





rejoinder on record by impugned order dated 20.12.2025 solely on the ground of delay, is justified?

17. Before dealing with facts and law on the point, it is felt desirable to refer to the statutory provision of Order VIII Rule 9. The same is reproduced herein below:

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.*

18. Order VIII Rule 9 CPC neither stipulates a limitation period for bringing rejoinder on record nor specifies the stage at which it should be brought on record. Rather it provides for power of the Court to all such applications **at any time**. Therefore, rejection of the said application by the learned Commercial Court merely on the ground of delay is erroneous, as delay, by itself, could not have been a sole basis for such rejection.

19. This Hon'ble High Court in ***Mukut Raj Laxmi (Supra)*** held that Order VIII Rule 9 does not prescribe any time limit for filing of rejoinder and the same can be allowed at any stage. The relevant paragraph is reproduced herein below:

"26. The contentions of the petitioners concerning belated presentation of application by the respondents-plaintiffs for craving leave of the court to file rejoinder and the fact that proposed rejoinder is quite lengthy are per se superfluous. As a matter of fact, learned court below has observed that application





with proposed rejoinder is filed by the respondents-plaintiffs before framing of issues and, therefore, it cannot be said that endeavour was made by the respondents-plaintiffs belatedly. **It is also noteworthy that under CPC, no time limit is prescribed for filing rejoinder and, therefore, this plea is wholly untenable.** The fact that rejoinder is lengthy is also a plea which cannot be countenanced as per the provisions of CPC. The provisions of CPC nowhere envisage the length and breadth of the plaint/written statement or the rejoinder. As such, there cannot be any restriction on the number of pages of the rejoinder. Moreover, the respondents-plaintiffs have filed rejoinder to meet the pleadings incorporated in the written statement which too is quite lengthy. Therefore, this argument of learned counsel for the petitioners merits outright rejection."

20. Moreover, the Hon'ble Apex Court in **Olympic Industries (Supra)** held that mere delay is not a sufficient ground for dismissal under Order VIII Rule 9. The relevant paragraph is reproduced herein below:

"10. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter-statement could not be allowed, **as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional counter-statement.** At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter-statement which could easily be compensated by costs. That apart, the delay in filing the additional counter-statement has been properly explained by the appellant."





Thus, the reason as assigned by learned Commercial Court while rejecting petitioner's application is not sustainable in eyes of law.

21. The Learned Commercial Court also failed to consider other valid parameters, which ought to have been considered while deciding applications under Order VIII Rule 9 as laid down by learned Courts in a catena of judgments. In **State of Rajasthan v. Mohd. Iqbal (1998DNJ (Raj.)275)**, this Hon'ble High Court laid down several parameters and principles governing the scope of the said provision. The relevant paragraph is reproduced herein below:

"9. The principles deducible from the above discussions may be summarized thus-

- a) The plaintiff cannot be allowed to introduce new pleas by way of filing rejoinder, so as to alter the basis of his plaint.*
- b) In rejoinder, the plaintiff can be permitted to explain the additional facts which have been incorporated in the written statement.*
- c) The plaintiff cannot be allowed to come forward with an entirely new case in his rejoinder.*
- d) The plaintiff cannot be permitted to raise inconsistent pleas so as to alter his original cause of action.*
- e) Application under Order 8, Rule 9, CPC cannot be treated as one under Order 6, Rule 17, CPC as both are contextually different."*

The Hon'ble High Court reiterated these principles in **Babu Bhai Kashyp (Supra)** and **Yogesh Tripathi (Supra)**. None of the above-mentioned parameters were considered by learned





Commercial Court and therefore, the said order suffers from infirmity, which renders the order impugned erroneous.

22. Moreover, apart from traversing the averments made in the plaint, the respondents, in their written statement, introduced fresh explanations relating to the factual matrix, and also advanced new interpretations of the clauses of contract in question. In such circumstances, this Court finds that the filing of a rejoinder was not only justified but also imperative, in order to afford the petitioner an effective opportunity to explain and rebut the said new pleas and interpretations.

23. Counsel for respondent objected the application for rejoinder on the ground that petitioner has categorically admitted in paragraph 6 of the said application that no new facts have been introduced in the written statement. In view of such an admission, he contended that there is no justification whatsoever for permitting the rejoinder to be taken on record. However, this Court finds that the respondent has read the said averments in its isolation, which is not permissible. As a matter of fact, the petitioner in paragraph 13 and 14 of the application has clearly stated that the rejoinder is necessary for extending explanations to the additional facts and to controvert wrong interpretations of the clauses of the contract as mentioned in the written statement.

24. It is a settled position of law that rejoinder can be filed to explain new facts introduced in the written statement, as in the present case. This Hon'ble High Court in ***Mohd. Iqbal (Supra)*** has categorically affirmed the same in para 9(b) of the said judgment.





25. Moreover, this Hon'ble High Court in ***Yogesh Tripathi (Supra)*** allowed the proposed rejoinder by plaintiffs to controvert the additional facts introduced by defendants. The relevant paragraphs are reproduced herein below:

"12. A perusal of the proposed rejoinder submitted by the petitioners reveals that the plaintiffs have neither sought to introduce new facts nor they are seeking amendment of the plaint by way of proposed rejoinder. The plaintiffs have rather tried to controvert additional fact brought on record by the defendants, by way of the written statement, which, as a matter of fact were beyond the scope of the suit.

13. In overall analysis of the facts, this Court is of the considered opinion that the learned Trial Court has committed an error in refusing the plaintiffs to file rejoinder."

26. The counsel for respondent placed heavy reliance on the decision in ***Datta (Supra)***. The said decision is distinguishable on more than one grounds. Firstly, in the said case, on facts, the material sought to be brought on record by way of rejoinder was already available before the Court, whereas in the present case, the petitioner seeks to respond to and explain new facts/explanations/interpretations introduced by the respondents. Secondly, even the third contingency enumerated in the said judgment clearly speaks about the discretionary power of the Court to permit filing of a rejoinder in exercise of powers under Order VIII Rule 9 CPC, in deserving cases.

27. The counsel for respondents also contended that petitioners have preferred the said application after gross delay considering the written statement was filed on 09.07.2024. However, as stated





by petitioners that pursuant to liquidation proceedings before the National Company Law Tribunal, M/s Kalinga Metalics Ltd. has acquired the business undertaking of the petitioner as a going concern, along with all its assets, rights, title and interests. Therefore, due to the change in entire management of the petitioner, the delay in filing the rejoinder is sufficiently justified.

28. Counsel for respondents expressed his apprehension that filing of rejoinder would result in re-opening or re-initiating the trial and the same would further delay the proceedings. However, the petitioner in unequivocal terms has undertaken before this Court that upon the rejoinder being taken on record, no additional evidence shall be led, nor shall any further cross-examination of the defendants' witnesses be sought. In view of the said undertaking, the objection raised by the respondent cannot be sustained.

29. Thus, in view of the aforesaid reasoning and having regard to the nature of the rejoinder, this Court finds that learned Commercial Court committed an error in disregarding the parameters laid down under the relevant statutory provisions as well as the settled judicial pronouncements governing the stage of taking of a rejoinder on record. The rejection of the application merely on the ground of delay cannot be sustained, inasmuch as it is a well-settled position of law that a rejoinder may be permitted at any stage of the proceedings, provided no prejudice is caused to the opposite party.

30. This Court finds that jurisdiction vested in learned Commercial Court under Order VIII Rule 9 was not properly





exercised, resulting in a jurisdictional error. Consequently, the impugned order warrants interference by this Court. The writ petition is accordingly allowed, and the impugned order is quashed and set aside.

31. The application preferred by the petitioner for taking rejoinder on record is, hereby allowed. Learned Commercial Court is directed to take the said rejoinder on record.

32. In view of the submission made by the parties that the matter is at the final stage of hearing and the undertaking given by learned counsel for the petitioner that no new evidence shall be introduced, the learned Commercial Court is directed to take the rejoinder on record and thereafter proceed to hear final arguments. The Court shall endeavour to decide the suit expeditiously, without granting any unnecessary adjournments to either of the parties. The suit in question shall be disposed of as early as possible, preferably within a period of two months from the date of this order.

33. Stay petition and pending applications, if any, also stand disposed of.

34. No order as to costs.

(SANJEEET PUROHIT),J

33-sumer/-