

**Money Suit No. 05 of 2022**  
**CNR No.WBBD 17-000009-2022**  
**JO Code No.WB01311**

**Order No.14**

**Dated 16.02.2023**

Both parties filed hazira.

The application being IA No. 6 of 2023 dated 18.01.2023 seeking to set aside the ex parte order is taken up for hearing.

It is submitted by the Learned Advocate for the defendant / petitioner that due to the death of the wife of defendant no. 2 who is also the defendant No 3 in the instant suit, the defendant failed to appear in court on 23.09.2022 and accordingly the suit was directed to proceed ex parte against the defendants. The Learned Advocate also submitted that absence of the defendants on 23.09.2022 was beyond their control. He also submitted that the absence of the defendant be condoned and the order of ex parte hearing be recalled and the defendants be given an opportunity to contest the suit.

The Learned Advocate for the plaintiff / respondent raised formal objection.

Having heard the Learned Advocates for the parties and having considered their submissions and also having considered the circumstances which prevented the defendants from appearing in court on 23.09.2022, I deem it fit and proper to allow the instant application. Accordingly IA No. 6 of 2023 dated 18.01.2023 is allowed. The order dated 23.09.2022 whereby the suit was directed to be proceeded ex parte against the defendant Nos. 1,2,4 & 5 is hereby recalled.

The application being IA No.5 of 2023 dated 18.01.2023 seeking acceptance of the written statement by condoning the delay is taken up for hearing.

It is submitted by the Learned Advocate for the defendants / petitioners that it took sometimes for the defendants to collect the documents from authorities and that the death of the defendant No.3 who happens to be the wife of defendant No.2 also prevented the defendants from filing the written statement within the statutory period. He submitted that as the situation was beyond the control of the defendants so the written statement was filed after the statutory period. He submitted that the delay be condoned and the written

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statement filed by the defendants on 18.01.2023 be taken on record.

Learned Advocate for the plaintiff / respondent raised vehement objection and submitted that the application for condonation of delay cannot be filed and cannot be taken on record after that the expiry of 120 days from the date of service beyond which period the court has no power to condone the delay in filing the written statement.

I have heard the Learned Advocates for the parties and have considered their submissions.

Defendant no. 1 in the instant case received the summons on 24.06.2022. Written Statement ought to have been filed by him on or before 24<sup>th</sup> July, 2022 or within the period of 120 days from the date of receiving the summons as per Order VIII Rule 1 of the CPC.

The defendant no 2, 4 and 5 received the summons on 28.07.2022 and similarly they ought to have filed written Statement on before 27.08.2022 or within the extended period of 120 days. The written statement in the instant case was however filed on 18.01.2023 i.e, beyond the extended period of 120 days.

Amendments were carried out to the Civil Procedure Code through Section 16 of the Commercial Courts Act, 2015. The Hon'ble Apex Court in the case of **SCG Contracts (India) Private Limited V/s. K.S Chamankar Infrastructure Private Limited and others ,reported in (2019) 12 SCC 210** has held that these timelines are to be mandatorily adhered to. The Hon'ble Court further held that the Commercial Court dealing with a Commercial Suit had no discretion to condone delay and could not allow the written statement to be taken on record beyond the mandatory period provided under Order VIII Rule 1 CPC. It was observed that :-

**"8.** The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

"Provided further 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

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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 and 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.”

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

“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 and twenty days from the date of service of summons and on expiry of one hundred and 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.”

This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

**“10. Procedure when party fails to present written statement called for by court.**—Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.”

Therefore, in the light of the observation of the Hon’ble Apex Court as passed in the case of SCG Contracts (Supra) as well as in view of the provisions of Order VIII Rule 1 of the CPC. the application for condoning the delay in filing the written statement is rejected. IA No.5 of 2023 seeking acceptance of the written statement is also accordingly rejected. The written statement is not taken on record.

Fixed the matter for filing of affidavit of witnesses and evidence of plaintiff witnesses on **22.03.2023 & 23.03.2023.**

Dictated and Corrected by me:

Judge, Commercial Court  
at Asansol

Judge, Commercial Court  
at Asansol