

Money Suit (Commercial)– 46/2024
CNR :WBBD17-000058-2023
JO Code : WB01311

Order No – 12
Dated 22/08/2024

This day is fixed for hearing of the temporary injunction application.

The plaintiff files hazira.

Mr. Anunoy Mukherjee, Ld. Advocate files fresh vakalatnama on behalf of the defendant.

The defendant also files WS as well as an application for condonation of delay in filing the written statement. Let the application be registered as IA no.09 of 24.

The defendant also files objection to the application U/Or. XXXIX Rule 1 & 2 as well as statement of admission or denial of documents.

The plaintiff files an application U/Or. XIII A of the CPC.

The same has been registered as IA no. 08 of 2024 dated 22/08/2024.

Copy of the application has been served to the Ld. Advocate appearing for the defendant who seeks time to file objection.

Prayer is allowed.

The application for condonation of delay in filing the WS is taken up for hearing.

It is evident from the record that the defendant appeared in the suit on 16th April, 2024.

In the meantime by an order dated 17/02/2024 the suit was directed to be proceeded ex-parte against the defendants.

The defendant thereafter on 16th April, 2024 filed an application for recalling the order of ex-parte hearing and in the said application being IA no. 05 of 2024 the defendants admitted that summons were received by it on 09/01/2024.

Order VIII Rule 1 of the CPC mandates that written statement has to be filed within a period of 30 days from the date of service of summons.

The *proviso* to Order VII Rule 1 further stipulates that if written statement is not filed within the said period of 30 days , the defendant shall be allowed to file written statement on such other day as maybe

//2//

specified by the Court for reasons to be recorded in writing on payment of cost but which shall not be later than 120 days from the date of service of summons. The *proviso* further mandates that on the expiry of 120 days from the date of service of summons, the defendants shall forfeit the rights to file written statement.

In the case on hand admittedly the summon was received by the defendant on 09/01/2024.

The 30 days period for filing written statement expired on 8th of February, 2024.

The defendants had further time of 90 days to file the written statement and which also expired on 8th of May, 2024.

The written statement has been filed today, much beyond the period of 120 days.

Therefore in view of provisions of Order VIII Rule 1 of the CPC the Written Statement which has been filed today beyond the period of 120 days cannot be accepted.

In the case of SCG Contracts (India) Pvt. Ltd. Vs. KS Chamankar Infrastructure Pvt. Ltd. and others (2019) 12 SCC 2010, it has been held by the Hon'ble Apex Court that the Court has no power to extend the time to file Written Statement beyond the period of 120 days.

In view of such, the application for condoning the delay in filing the WS is rejected.

IA no.09 of 2024 is disposed of.

Written statement is not taken on-record.

Fix 27/09/2024 for hearing of IA no.08 of 2024.

D/C by me

Judge, Commercial Court
Asansol

Judge, Commercial Court
Asansol