

Com Suit No. 3 of 2024 (CNR WBCC01-000520-2024)
(Present : Sri S. Dasgupta, Bench-III (WB01246))

Order No. 07 / dated 13.03.2025

Today is fixed for exparte hearing of the instant suit.

Both parties file haziras. Ld. Advocates for both sides are present.

The three applications filed by the defendant, through a put up petition on 31.01.2025, and fixed for being put up today, praying – for vacating the order fixing the instant suit for exparte hearing, for accepting the written statement, and also another application u/s 5 of the Limitation Act, on the grounds stated therein, are taken up for hearing.

Perused the applications. Heard both sides.

Now, in the amendment of Order VIII Rule 1 of the CPC relating to Commercial disputes it is stated 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 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.”

In light of the above, it is crystal clear that in view of the clear mandate of the amended provision and the prohibition contained therein, this Court cannot exercise any discretion by extending the time for filing the written statement beyond the mandatory prescribed period in commercial suits.

The facts and circumstances of the ruling reported in 2021 (2) ICC 555 (Cal), relied upon by the Ld. Advocate for the defendant, do not match with those of the instant case, inasmuch as the same relates to a civil suit and not a commercial suit, and as such, the said ruling is not applicable to the instant case and does not help the defendant in any way.

Thus, in the instant suit, being a commercial suit, the written statement – being admittedly filed beyond the statutory period – cannot be and is, therefore, not accepted.

Hence, both the said two applications filed by the defendant, praying for accepting the written statement and under section 5 of the Limitation Act are considered and rejected, but without any cost, and accordingly disposed of.

However, in the interests of proper justice, the application filed by the defendant, praying for vacating the order fixing the instant suit for exparte hearing is considered and allowed, and accordingly disposed of.

Fix 20.05.2025 for P.H.

D/c by me

Sd/-

Judge, Bench-III
City Civil Court, Calcutta.

Sd/-

Judge, Bench-III
City Civil Court, Calcutta.