

TS (Com) –90/2024

**Present :: Ishani Chakravarty Banerjee (J.O Code.WB00890)
Judge, Commercial Court at Rajarhat
North 24 Parganas.**

CNR: WBNP19-000038-2024

18

03.09.2025

Today is fixed for hearing on the point of acceptance of written statement.

The learned Advocate for the plaintiff appears and files hazira.

The learned Advocate for the defendants appears and files hazira.

Now the case record is taken up for hearing on the point of acceptance of written statement.

Heard the learned Advocates for the plaintiff and the defendant.

It is submitted by the learned Advocate for the plaintiff that although the defendants entered appearance by filing Vakalatnama on 06.06.2024, the written statement has been filed beyond the statutory period of 30 days, and even after the extended period of 90 days, as prescribed under Order VIII Rule 1 of the Code of Civil Procedure.

The learned counsel for the defendants does not dispute the delay and candidly admits that the written statement was filed beyond the prescribed time limit. It is also conceded that there was no application seeking condonation of delay or any justification placed on record explaining the reason for such delay.

The learned counsel for the plaintiff further relies upon the provisions of the Commercial Courts Act, 2015, read with the amended provisions of Order VIII Rule 1 of the CPC, to contend that in cases arising out of commercial disputes of specified value, the time period for filing the written statement is not merely directory but mandatory in nature.

The Court has considered the relevant legal provisions. As per the second proviso inserted to Order VIII Rule 1 CPC by Section 16 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, the law mandates 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.”

Further, Order VIII Rule 10 CPC, as amended, specifically bars courts from granting any extension beyond this 120-day period:

“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.”

The language of the statute is clear and unambiguous. It categorically restricts the court from accepting a written statement if the same is not filed within **120 days from the date of service of summons** in a commercial suit. The judgment in **SCG Contracts (India) Private Limited Vs. K.S. Chamankar Infrastructure Private Limited and Others (2019) 12 Supreme Court Cases 210** has settled this aspect further, wherein, it has been held as under :-

“..... 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 VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.”

In the present case, written statement has been filed on behalf of the defendants on 04.10.2024. However, the perusal of the record, particularly the affidavit of service along with postal track report reveals that the defendants had received the summons on 24.05.2024 and appeared in this case for the first time in the Court on 06.06.2024, as reflected in the order sheet dated 06.06.2024. No application for condonation of delay or justification has been offered to explain the default in filing the written statement beyond the period of 120 days from the date of receipt of the summons. In view of the statutory mandate and the binding legal position, this Court is not inclined to accept the written statement on record.

The defence of the defendants is hereby struck off in accordance with law. However, the defendants shall retain a limited right to cross-examine the plaintiff's witnesses during trial, as permissible under the law.

Fix 08.12.2025 for **Plaintiff's evidence.**

Sd/- Ishani Chakravarty Banerjee
Judge
Commercial Court,
Rajarhat, North 24 Parganas