

TS (Com) – 74/2024

TS – 25/2023(CC)

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

CNR: WBNP19-000146-2023

16

03.09.2025

Today is fixed for hearing of the application under Order VII Rule 11 read with Section 151 of the CPC.

The learned Advocates for the plaintiff appears and files hazira.

The learned Advocate for the defendants also appears by filing a fresh Vakalatnama and submits an application seeking adjournment, stating that he has recently been engaged to represent the defendants and requires time to go through the case record in order to prepare the defence. A copy of the said adjournment petition has been served on the other side.

Heard the learned Advocates for the respective parties.

During the course of hearing, the learned Advocate for the defendants submits that he is unaware of any application under Order VII Rule 11 read with Section 151 CPC having been filed on behalf of the defendants. The learned Advocate for the plaintiff also submits that she has not received any such application and is not aware of any such filing.

Upon perusal of the case record, it appears that no application under Order VII Rule 11 read with Section 151 CPC is found in the suit record. Though the order dated 12.02.2024 reflects that such an application was filed by defendant no. 1, on scrutiny, no such application is found in the record.

Further, the court fee register dated 12.02.2024 does not reflect the filing of any application of that nature. The case diary also notes that on 12.02.2024, the suit (then TS-25/2023 (CC), now renumbered as TS (Com) 74/2024) was fixed for SR/AD on 07.03.2024. This lends further support to the conclusion that no application under Order VII Rule 11 read with Section 151 CPC was filed.

Additionally, it is pointed out by the learned Advocate for the plaintiff that since the defendants entered appearance on 07.03.2024, no written statement has been filed by the defendants till date.

The learned Advocate 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.

It is further submitted that in light of the provisions of the Commercial Courts Act, 2015, read with the amended provisions of Order VIII Rule 1 CPC, which are applicable to suits arising out of commercial disputes of specified value, a mandatory time frame is prescribed for filing of the written statement. As per the statutory mandate, the written statement must be filed within 120 days from the date of service of summons, failing which the defendants forfeit their right to file the same, and the Court is barred from accepting it on record.

This legal position on the point of acceptance of written statement in a Commercial Court is now well-settled and no longer res integra.

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, 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.”

Upon considering the submissions of both sides and upon perusal of the case record, it is clear that no application under Order VII Rule 11 read with Section 151 CPC has been filed. Further, the defendants, despite entering appearance on 07.03.2024, have not filed their written statement till date and the statutory period of 120 days from the date of service of summons has already expired.

Accordingly, the defendants have forfeited their right to file a written statement, and this Court is not empowered to accept the same at this stage.

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

Fix **16.12.2025** for plaintiff's evidence.

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

