

MS (Com) – 75/2024

MS - 44/2022 (CC)

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

CNR: WBNP19-000160-2022

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05.07.2025

Today is fixed for hearing of the application under Order XXII Rule 10 read with Section 151 of the CPC and ex-parte vacating application dated 07.10.2023 as well as acceptance of the Amendment of the plaint.

The learned Advocate for the plaintiff appears and hazira.

The learned Advocate for the plaintiff appears and files hazira. The learned Advocates for the defendants nos. 1, 2, and 3 appear and file hazira.

The learned Advocate for defendant no. 4 appears and files an adjournment petition, praying for time on the grounds stated therein. Copy not served, but the same is enclosed with the case record.

The defendant no. 5 takes no steps. Despite repeated calls, none appears for defendant no. 5. Upon perusal of the case record, it appears that the suit has already proceeded ex-parte against defendant no. 5 in terms of the order dated 02.09.2023. Thereafter, neither any application for vacating the order dated 02.09.2023 has been filed nor he appears today. Accordingly suit be proceeded ex-parte against the defendant no.5.

Now, the case record is taken up for hearing of the application under Section 151 of the CPC regarding vacating the ex-parte order as regards defendant nos.2 & 3 and acceptance of the written statement.

Heard the learned Advocates for the respective parties.

The learned Advocate for the plaintiff raises no objection but submits that costs should be imposed for accepting the written statement and vacating the ex-parte order.

Upon perusal of the written statement filed by defendants nos. 1, 2, and 3, it appears that the same has not been filed in compliance with the necessary parameters under the **Commercial Courts Act, 2015**, as amended. Specifically, the written statement is not supported by a **Statement of Truth** and a **list of documents**.

The Hon'ble High Court, Calcutta has held in the case of *Harji Engineering Works Pvt. Ltd. v. Hindustan Steelworks Construction Ltd.* (Calcutta High Court, 14.09.2021), that procedural lapses including the non-filing of a Statement of Truth are curable and do not automatically render a defense void and can be remedied in the interest of justice. Accordingly, considering the submissions of the parties, and in view of the absence of objection from the plaintiff, the written statement filed by defendants nos. 1 to 3 is accepted conditionally, **subject to payment of costs of Rs.5,000/-** to the plaintiff and fulfillment of all parameters prescribed under the **Commercial Courts Act, 2015**, as amended by the next date and served upon the plaintiff.

Thereafter, the case record is taken up for hearing on the point of acceptance of the amended plaint.

The learned Advocate for the plaintiff submits that the amended plaint has been filed after fulfilling the necessary parameters under the Commercial Courts Act, 2015. However, upon perusal, it is found that the amended plaint filed on 05.04.2023 is not supported by a **Statement of Truth**.

Considering the submissions of the parties, the amended plaint is **conditionally accepted**, subject to fulfillment of all other parameters of the Commercial Courts Act, 2015 and **filing of the Statement of Truth by the next date**.

The plaintiff is directed to **serve copies of the amended plaint and the Statement of Truth** upon all defendants.

Fix **31.10.2025** for hearing of the injunction application and application under Order XXII Rule 10 read with Section 151 of the CPC and filing money receipt and necessary compliance by the parties under the Commercial Courts Act, 2015.

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