

Present: Sri Srikumar Goswami
Judge, Commercial Court at Alipore.
Money Suit 14/2019

Order no. 20
03.09.2020

In the matter of :
Suit for recovery of money,
damages valued at
Rs. 1,08,30,783/- plus
interest.

And

In the matter of :
M/S C.R.C. Exports Pvt. Ltd.
Vs.

In the matter of :
M/s. MGA Realtors Pvt. Ltd.
& 3 ors.

I.A. Nos. 79/2020 & 80/2020

1. Today is fixed for passing order.

2. Both the matters have already been heard and due to Covid-19 Pandemic, as no steps have been taken by the parties, initially no order has been passed.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.

Later

I.A. Nos. 79/2020

1. By the present application as filed by the Defendant no. 2 dated 14.02.2020, it is prayed for passing necessary order to accept the showcause as due to non taking of setps, the case has been taken up for exparte hearing against the Defendant no. 2.

2. On perusal of the record, it appears that the Defendant no. 2 failed to take steps on the first occasion on 20.11.2019 and subsequently also failed to appear before this Court till 14.02.2020 and before that occasion, only an undertaking has been filed to file Vokatnama.
3. The reason which has been given in the present application is no sufficient to explain the delay and the cause of personal inconvenience or inability to collect necessary documents are not suitable grounds.
4. However, for the ends of justice and for final determination of the issues between the parties, the petition be allowed and in such circumstances, due to the lethargical approach, the answering Defendant no. 2 has to pay appropriate cost.
5. Hence, it is

ORDERED

that the present application as being I.A.-79/2020 is considered and allowed subject to the payment of cost of Rs.10,000/- by the Defendant no. 2 and out of the said amount, the Defendant no. 2 shall pay Rs.5,000/- to the Plaintiff and the remaining amount shall be paid in favour of the Ld. Secretary, DLSA, Alipore.

Let a copy of this order be forwarded to the Ld. Secretary, DLSA, Alipore for his kind information with a request to accept the above cost amount.

Accordingly, the instant I.A is also disposed off.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.

Later

I.A. Nos. 80/2020

1. Another application has been filed on behalf of the Defendant no. 2 to accept the W/S which has been filed belatedly.
2. I have already heard both sides.
3. Perused and considered the instant application as well as objection.
4. It is admitted position that the instant suit has been filed on 11.06.2019 before the Ld. Previous Court and the Defendant no. 2 has received summons on 06.07.2019. Subsequently, the suit was transferred before this Commercial Court on 05.07.2019 and the Defendant no. 2 appeared by filing an undertaking on 27.01.2020 and on 14.02.2020, W/S has been filed by them alongwith showcause.
5. It has been objected by the Plaintiff that the W/S has been filed beyond 120 days and such W/S cannot be accepted in view of the Judgment of the Hon'ble Supreme Court of India in **SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd.** as reported in **2019 SCC OnLine SC 226** and the said Judgment as passed by the Hon'ble Supreme Court of India has taken into consideration the statutory time period of filing of W/S within 120 days in the Commercial Court.
6. The factual position of the present case is different from the factual case as referred by the Plaintiff as initially, the instant suit was not filed before this Court and the suit has been filed before the Ld. Previous Court wherein the Defendant no. 2 did

not appear and subsequently appeared before this Court and filed W/S on 14.02.2020.

7. In such case, the mandatory period of 120 days is not applicable and liberal view is to be taken considering the provisions of the Commercial Courts Act, 2015, particularly in Section 15(4) of the said Act wherein it is the legislative mandate to frame new timelines.
8. Considering all aspects and particularly the provisions of Section 15 of the Commercial Courts Act, 2015, the present application to accept the W/S is considered and allowed and let the W/S be accepted.
9. In view of the above order, the instant I.A. is also disposed off.
10. To **30.09.2020** at 12.30 p.m. for fixing schedule for case management hearing.
11. All parties shall have the liberty to participate in physical or virtual hearing and in case of virtual hearing, request shall be made before three(03) days in advance through the following Email IDs:
 - a. commercial.alipore@indiancourts.nic.in
 - b. commercialcourtalipore@gmail.com

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore
and Paschim Midnapore.