

Present: Smt. Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
TS (Com) 86 of 2024
CNR No. WBSP18-000053-2024

Anita Sunil Punwani

.....Plaintiff

Vs.

Sass Med Pvt. Ltd. And Ors.

.....Defendants

Order No. 19

Date: 22.01.2026

Today is fixed for passing order in respect of I.A. No. 09 of 2024.

Both sides file their respective haziras.

Now, the instant matter is taken for passing necessary order.

I.A. No. 09 of 2024

The captioned application has been filed by the defendants for acceptance of its written as filed with this instant application.

Sum and substance of the contention of the defendants is that due to acute illness of the then learned Advocate of the defendants, the defendants could not file the written statement within the stipulated time of 90 days. However, it is stated by the defendants that defendants tried to file the written statement in context but the same could not file on 24.09.2024 although the said written statement was duly served upon the learned Advocate for the plaintiff on 24.09.2024, and admittedly, the defendant filed the said written statement before this Court on 05.10.2024.

Per contra, the plaintiff has refuted the aforesaid contention of the defendants. However, the plaintiff has contended that the only ground taken by the defendants to explain the delay in filing the written statement has been stated in paragraph nos. 2 and 3 of the said application where the defendants have stated that due

to delay on the part of the Advocate, the written statement could not be filed. It is well settled that delay on account of the Advocate cannot be a ground to condone the delay in filing the written statement. It is also submitted by the plaintiff that the language of Order VIII Rule 1 states that the date of filing has to be considered and not the date of affirmation or any other date.

On perusal of the materials on record and also on hearing of both the sides, it is to be stated that summons were served upon the defendants on 12.06.2024 and admittedly, the defendants filed the written statement on 04.11.2024. But, the said written statement was duly affirmed by the defendants on 08.10.2024 and same was also received by the learned Advocate of the plaintiff on 08.10.2024. Therefore, it is admitted that the written statement in context was not filed by the defendants within 30 days as per Order VIII Rule 1 and even the same was not filed within 90 days. Rather, it was filed on 145th day from the date of service of summons upon the defendants. As such, the said defendants could not file the written statement within 120 days.

But, admittedly the defendants affirmed the said written statement within the stipulated time of 120 days and even the same was served upon the plaintiff's learned Advocate within the said stipulated time being 120 days. But, as stated, due to illness of the learned Advocate of the defendants, the defendants could not file the same within the stipulated time before this Court.

However, it is to state that while consideration of the freezing date for limitation, the date of verification/affirmation of the written statement is relevant. In respect of that this Court has relied on the decision of the Hon'ble High Court at Calcutta passed in the case of ***Pratishtha Commercial Pvt. Ltd. vs. Orissa State Cooperation Milk Producer's Federation Ltd.*** wherein the Hon'ble Court held as follows:

"The plaintiff is admittedly in default in filing the affidavit-in-opposition. The affidavit-in-opposition affirmed on 15th May, 2023 is made over to Court which is taken on record by extending the time for filing of the same. The default and the laches on the part

of the plaintiff should not deprive the defendant from filing the written statement. At the same time the conduct of the defendant is also to be looked into. Assuming without admitting that the date of delivery of the Writ of Summons is 18th January, 2023 as indicated in the mode of service, the 120th day expired on 18th May, 2023. The period of 120 days from 3rd February, 2023 has not yet elapsed. The defendant has verified and affirmed a written statement on 18th May, 2023 i.e. within 120 day from the date of receipt of the Writ of Summons if it is taken to be 18th January, 2023.

In view of the aforesaid, the written statement affirmed by the defendant on 18th May, 2023 is allowed to be filed in the department without prejudice to its rights and contentions".

It is also to state that a mini trial should not be embarked upon while deciding whether the delay should be condoned or not as regards, this Court also relied on the case of **S.K.M. Agro Pvt. Ltd. vs. Paritosh Biswas.**

Therefore, considering above, it is found that the written statement affirmed within the stipulated 120 days but the same was not filed within such time due to illness of learned Advocate appearing for the defendants. Hence, in respect of the above decision of the Hon'ble Court and for the ends of justice this Court is hereby allowed the instant application being I.A. no. 09 of 2024 on contest and as such the same is disposed of.

Accordingly, the written statement in context filed by the defendants is hereby taken on record.

Fix the matter on **04.02.2026 at 10:45 a.m.** for fixing date of first case management hearing.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram

Later:

A vakalatnama has been filed on behalf of the defendants however, the no objection has not yet been obtained.

The said vakalatnama be kept with the record.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

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