

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore

Title Suit 21 of 2023
Renumbered as TS (Com)/58/2023
Old Title Suit no. 131/2017
CNR No. WBSP18-000100-2023

Order No. 09
14.06.2024

In the matter of:
Suit for declaration recovery of damages
valued at Rs.1,72,48,652/- (Rs.500- for
declaration, Rs.1,72,48,152/- for damages.

And

In the matter of:
M/S. RESCON (INDIA) PRIVATE
LIMITED

Vs.

In the matter of:
MACNEILL ENGINEERING
LIMITED

ORDERED

Today is fixed for hearing of the applications being I.A nos. 01/2024 and 02/2024.

Both sides have filed their respective haziras.

I.A No. 01/2024

This is an application filed by the defendant praying for necessary order to vacate the order of ex parte hearing thereby condoning the unintentional laches of the defendant, if any, at all and allowing him to contest the instant suit.

It is the contention of the Ld. Counsel of the defendant that the defendant appeared before this Court on 28.11.2023 upon getting the knowledge of existence of the instant suit by an intimation from this Court and also filed the written statement within 120 days from the date of receiving of the intimation from this Ld. Court.

It is the further contention of the defendant that prior to transfer of this suit, the instant suit was filed before the Civil Judge(Sr. Divn.) 7th Court at Alipore and summons was not served upon them from that Court and as such the defendant did not appear on any previous occasion and unfortunately the suit was fixed for ex-parte hearing.

Ld. Counsel on behalf of the defendant during his submission has relied upon one decision in the case of **Indu Bhushan Vs. Munna Lal and Anr. reported in (2007) 14 SCC 42** and submitted before this Court that service of process of Court as per Order V Rule 9 of the CPC is mandatory and which was not complied in the instant suit.

Ld. Counsel on behalf of the plaintiff submitted before this Court that it is admitted fact that Order V Rule 9 of the CPC has not been complied and he further submitted before this Court that he has no objection if the instant petition for vacating the ex parte order, of the defendant is allowed by this Court.

So, having heard the submissions of both sides and perusing the decision cited by the Ld. Counsel on behalf of the defendant, this Court is of the view that an opportunity should be given to the defendant to contest the instant suit by way of vacating the order of ex parte hearing subject to payment of cost.

Hence, it is

ORDERED

that, the instant application being **I.A No. 01/2024** filed by the defendant praying for vacating the order of ex parte of the instant suit is hereby allowed on contest subject to payment of cost of Rs.20,000/- to be paid to the plaintiff by the defendant.

The defendant is hereby directed to submit the receipt of payment of costs to the plaintiff on the date fixed.

I.A No. 02/2024

This is an application on behalf of the defendant for acceptance of written statement.

Seen the application.

Heard the Ld. Lawyer for the both sides.

It appears that although the defendant has not filed the written statement within the 30 days of receiving the intimation of this Court regarding the institution of the instant suit but it has been filed within 120 days and cause shown by the defendant for the same in the instant application, which is considered and allowed.

Accordingly, the instant application being **I.A No. 02/2024** filed by the defendant praying for acceptance of written statement is allowed on contest.

Let the written statement be taken on record.

To **26.07.2024 at 11:00 a.m** for further order.

Parties to act on the basis of the downloaded copy of the ordersheet from the Web-site/Ecourts-App.

Dictated & corrected by me,

Sd/-

*Judge, Commercial Court at Alipore
For districts of South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram*

Sd/-

*Judge, Commercial Court at Alipore
For districts of South 24 Parganas, Purba Medinipur,
Paschim Medinipur & Jhargram*