

Present: Sri Srikumar Goswami
Judge, Commercial Court at Alipore.
Money Suit 39/2019

Order no. 08
18.02.2020

In the matter of :
Suit for recovery of money
valued at Rs.3 Crores.

And

In the matter of :
Austin Distributors Pvt. Ltd.

Vs.

In the matter of :
Sayan Sarker.

1. Today is fixed for passing order in respect of an application filed for acceptance of W/S by the Defendant.
2. Parties file haziras.
3. I have already heard both sides.
4. Perused and considered the present application for acceptance of W/S as filed by the Defendant.
5. The Defendant has admitted that he has received summons on 16.05.2018 and further he has filed W/S on 04.10.2018 before this Court.
6. The record has been transferred to this Court from the Ld. Civil Judge (Sr. Div.), 4th Court at Alipore vide order dated 20.09.2019.

7. The question is whether in view of the amended provision, the Defendant has any right or liberty to file W/S after 120 days of receiving summons.
8. The Defendant has explained that he has appeared on 13.07.2018 and prayed for time and the Ld. Civil Judge (Sr. Div.), 4th Court at Alipore has been pleased to fix 04.10.2018 for filing W/S. As such, he has filed the W/S after 120 days and according to the Defendant, he has filed W/S after 141 days of the receipt of summons.
9. Firstly, the grounds as taken by the Defendant is not sufficient for avoiding the submission of W/S as submission of W/S by the Defendant is a mandatory provision and the Defendant has inherent right and absolute liberty to file W/S within the statutory period and in such case, even if no date is fixed by the Ld. Court, they have right to file it by giving necessary put-up application. So, the point as taken by the Defendant is absolutely unsustainable and not maintainable.
10. The second question is whether this Court has any liberty or right to condone the delay and accept W/S after expiry of 120 days.
11. The Commercial Courts Act, 2015 came into existence on 23.10.2015. The term commercial suit has been defined under Section 2(c) of the said Act which reads as follows:
“...commercial dispute” means a dispute arising out of—
 - (i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;**

- (ii) export or import of merchandise or services;**
- (iii) issues relating to admiralty and maritime law;**
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;**
- (v) carriage of goods;**
- (vi) construction and infrastructure contracts, including tenders;**
- (vii) agreements relating to immovable property used exclusively intrade or commerce;**
- (viii) franchising agreements;**
- (ix) distribution and licensing agreements;**
- (x) management and consultancy agreements;**
- (xi) joint venture agreements;**
- (xii) shareholders agreements;(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;**
- (xiv) mercantile agency and mercantile usage;**
- (xv) partnership agreements;**
- (xvi) technology development agreements;**
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;**

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions...”

12. The Hon’ble Supreme Court of India in *M/S SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. & ors.* in connection with *Civil Appeal No. 1638 of 2019*, has been pleased to observe that:

“...8)The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure.

In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty 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.”

Equally, in Order VIII Rule 1, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred service and and twenty days from the date of summons and on expiry of one hundred twenty 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 was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:-

“Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up.

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

A perusal of these provisions would show that ordinarily 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...”

13. Further, the Hon’ble Calcutta High Court in *RDB Textiles Ltd. Vs. Union of India & ors.* in connection with *CS 214 of 2016*, has been pleased to observed that:

“...Today when the matter is taken up Mr. Sinha Roy appearing for the defendants submits that he may be granted leave to file an application for extension of time to file written statement. It is submitted at the Bar that the defendants have left Calcutta and for that reasons they could not come up with the written statement in time. However, this statement cannot be considered at this stage, nothing being put on record to that effect. The present suit is categorized as a Commercial Suit. According to the provisions of Section 16 (1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter the said Act) the defendants are required to file written statement within the time limit fixed under the said provision. The said provision says that so far the time limit fixed under the Code of Civil Procedure as amended and incorporated

*in the schedule of the said Act is to be valid for the Commercial disputes. Serial No. 4 of the said schedule says that if the defendant fails to file written statement within a period of 30 days he shall be allowed to file written statement on such other date as may be prescribed by the Court for reasons to be recorded in writing and on payment of such cost as the Court may deem fit and proper. But in no event it shall be later than 120 days from the date of service of summons and on expiry of 120 days from the date of service of summons, the defendant shall forfeit his right to file written statement and the Court shall not allow the written statement to be taken on record. In view of the such amended provision, Court has no discretion to extend the time to file written statement. Mr. Mukherjee appearing for the plaintiff has relied on a decision in the case of **NEW INDIA ASSURANCE COMPANY LIMITED VS. HILLI MULTIPURPOSE COLD STORAGE PRIVATE LIMITED** reported in (2015) 16 Supreme Court Cases page 22...”*

14. On and with effect from 23.10.2015, the Commercial Courts Act, 2015 came into existence and subsequently, this Commercial Court has been constituted with effect from 05.07.2019 for the districts of South 24 Parganas, Purba Midnapore and Paschim Midnapore.
15. Admittedly, this dispute is of commercial nature and with effect from the implementation of the Commercial Courts Act, 2015, this suit has been categorized as a commercial suit. Therefore, the liability on the moment of the Gazette Notification of the implementation of the said Act falls upon the Defendant and he is under the obligation to follow the time limitation as prescribed by the statute for filing of W/S. The Judgements of the Hon'ble Supreme Court of India as well as the Hon'ble High Court at Calcutta also provide the same direction.

16. Accordingly, this Court is in compulsion to fix the instant matter as an undefended suit by rejecting the present application as filed by the Defendant.

17. To **03.03.2020** at 12.30 p.m. for hearing.

18. Let the copies of this order be issued to all the parties to the dispute through electronic mail as per the amended provision of Order XX of the Civil Procedure Code in view of the amendment under the Commercial Courts Act, 2015.

19. The Department is asked to collect the e-mail ID of all respective parties as soon as possible.

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.