

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
[COMMERCIAL DIVISION]

IA NO. GA-COM/3/2024
In
CS-COM/564/2024

BRAVO SPONGE IRON PRIVATE LIMITED
VS
BIRAT CHANDRA DAGARA

&

IA NO: GA-COM/1/2024, GA-COM/3/2024
In
CS-COM/565/2024

SHAKAMBARI ISPAT AND POWER LIMITED
VS
BIRAT CHANDRA DAGARA

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : 3rd March, 2025.

Appearance:

Mr. Kumarjit Banerjee, Adv.
Ms. Sanchari Chakraborty, Adv.
Ms. Akanksha Chowdhury, Adv.
...for the plaintiff

Mr. Ratnanko Banerjee, Sr. Adv.
Mr. Jayanta Sengupta, Adv.
Mr. Saurodip Banerjee, Adv.
Mr. Rahul Auddy, Adv.
Mr. Aditya Goopta, Adv.
...for the defendant

The Court:- Mr. Kumarjit Banerjee, learned Senior Advocate, is appearing for the plaintiff.

Mr. Ratnanko Banerjee, learned Senior Advocate, is appearing for the defendant.

In Re: GA-COM/3/2024

The defendant has filed the present application being GA-COM/3/2024 praying for extension of time to file written statement. The defendant says that the writ of summons along with plaint was served upon the defendant on 16th May, 2024. The defendant says that defendant has already entered appearance in the interlocutory application and contesting the same.

Counsel for the defendant submits that after receipt of writ of summons, the advocate-on-record of the defendant had duly brief the counsel for drafting the written statement by holding conferences. He submits that during the conference it transpires that for drafting written statement certain papers, information and documents for the purpose dealing with allegation made in the plaint are required accordingly, the advocate-on-record of the defendant had directed that the defendant to submit the required information and documents to prepare written statement. He submits that many of the employees of the defendant company have either left the employment or retired from the service and accordingly the present employee of the defendant have taken some time to collect the document and to provide the same to the advocate-on-record.

Learned Counsel for the defendant submits that as per the service report of the Deputy Sheriff of Calcutta relied by the plaintiff dated 22nd May, 2024 the writ of summons was served through the District Court, Cuttack, Orissa on 16th May, 2024. The writ of summons was served through the postal service by speed post on 30th March, 2024. He relied upon Order V, Rule 9, Sub-rules (3),(4) and (21) of the Code of Civil Procedure and submits

that no order passed by this Court for sending the writ of summons through speed post and as such the service through the speed post upon the defendant on 30th March, 2024 is not in accordance with law.

Defendant says that if the date of service of writ of summons is taken as 16th May, 2024, the defendant has affirmed written statement within the outer period of 120 days.

Learned Counsel for the defendant has relied upon the judgment in the case of ***A.P. Distributer and Another vs. OK Play India Pvt. Ltd.*** reported in ***2022 SCC OnLine SC 1512*** and submits that the Hon'ble Supreme Court has held that the High Court was not justified in setting aside the order passed by the learned Commercial Court directing to take written statement on record. Learned Counsel for the defendant further relied upon unreported judgment passed by this Court in the case of ***Raijada Marbles and Ors. vs. Royalbuilt Infrastructure Private Limited and Ors.*** in ***GA-COM/4/2024 (CS-COM/429/2024)*** dated ***4th October, 2024*** wherein this Court has not accepted the written statement on the ground that the defendant has not filed the application within the outer period of 120 days for acceptance of the written statement but in the present case the defendant has filed the present application within outer period of 120 days.

Learned Counsel for the defendant has further relied upon the judgment in the case of ***Paras Ram Milkhi Ram vs. Sudarshan Tea. Pvt. Ltd. and Another*** reported in ***2022 SCC OnLine P&H 4365*** wherein the Hon'ble High Court of Punjab and Haryana has dealt with Order V, Rule 9, Rule 21 and held that if the defendant resides outside the territorial jurisdiction of the Court, the service sought to be effected upon the defendant

by way of registered post with acknowledgement due directly by the Court where the suit was instituted cannot be deemed to be proper service and the procedure adopted by the Trial Court was contrary to the law laid down in Order V, Rules 9 and 21 of the C.P.C.

Per contra, learned Advocate appearing for the plaintiff, draws the attention of this Court to the service report dated 22nd May, 2024 issued by the Deputy Sheriff of Calcutta wherein it has been certified that the writ of summon was duly served upon the defendant by personal service through the District Court, Cuttack, Orissa on 16th May, 2024 and the said fact was admitted by the defendant in paragraph 3 of the present application.

Counsel for the plaintiff submits that the writ of summon sent to the defendant through speed post was also received by the defendant on 30th March, 2024. The plaintiff has relied upon the Chapter VI, Rule 12 of the Original Side Rules of this Court and submits that in terms of the Original Side Rules of this Court, the Registrar or Master may all such business and exercise all such authority and jurisdiction under this Rule may be transacted or exercised by the Judge in Chambers, except where otherwise prescribed. Accordingly, the writ of summons upon the defendant was sent as per the order of learned Master by both the ways and thus it cannot be said that the writ of summons sent to the defendant through the speed post is not good service.

Counsel for the plaintiff further submits that though the plaintiff has raised the point that the writ of summons sent to the defendant not in accordance with law has not been pleaded in the application.

Learned Counsel for the defendant submits that in terms of the service report of the Deputy Sheriff of Calcutta it is crystal and clear that the notice was duly served upon the defendant on 30th March, 2024 and 16th May, 2024 which was duly admitted by the defendant but the defendant failed to file the written statement either within the prescribed period of 30 days or within the outer period of 120 days. He submits that only affirmation of written statement without filing in the Court or in the department, it cannot be said that the written statement is filed by the defendant.

In the case of ***A.P. Distributer and Another (supra)*** the defendant has filed the written statement on 34th day of the service of notice of summons and the learned Trial Court has accepted the same but the High Court had set aside the said order. Accordingly, the Hon'ble Supreme Court has held that the High Court has taken the technical view in setting aside the order of Commercial Court.

In the case of ***Raijada Marbles and Ors. (supra)*** this Court has categorically held that the defendant has affirmed the affidavit of written statement on 28th August, 2024 that is within period of outer limit of 120 days but the written statement was not placed on record and mere affirmation of affidavit of written statement without filing in the Court or the Department it cannot be said that written statement is filed within the prescribed period of limitation.

The Deputy Registrar (Legal) by his report dated 22nd August, 2024 certified that the defendant has not filed the written statement till 22nd August, 2024 that is even after the outer period of 120 days.

In paragraph 3 of the application, the defendant has admitted that he received the writ of summons on 16th May, 2024.

In paragraph 8 of the said application, the defendant has further admitted that filing of the written statement within 30 days as expired on 16th June, 2024.

In paragraph 9 of the said application, the defendant has made an averment with the written statement has been made ready and is ready to be affirmed.

Counsel for the defendant has stated that the written statement has also affirmed within the outer period of 120 days if the date is taken from 16th May, 2024. If the defendant affirmed the written statement within the outer period of 120 days at the time of filing of the present application, but the defendant has not annexed the said written statement along with the present application.

The High Court of Punjab and Haryana in the case of ***Paras Ram Milki Ram (supra)*** held that if the defendant is residing outside the territorial jurisdiction of the Court where the suit is instituted, service effected upon the defendant by way of registered post directly by the Court where the suit was instituted cannot be deemed to be proper service and contrary to the law laid down in Order 5, Rule 9 and 21 of C.P.C.

This Court is having the Ordinary Original Civil Jurisdiction and having Original Side Rules. Chapter VI, Rule 5, provides for service and return of summons which reads as follows:-

“5. Service and return of summons.- Unless otherwise ordered, such summons, not being an originating summons, shall be served two clear days before the return thereof. A summons may be made returnable in a shorter time, by leave of the Registrar or Master,

which shall be endorsed on it. In case of summons for time only, the summons may be served on the day previous to the return thereof."

Rule 12 of Chapter VI reads as follows:-

"12. Business which may be transacted by Registrar or Master.- The Registrar or Master may transact all such business and exercise all such authority and jurisdiction as under these rules may be transacted or exercised by a Judge in Chambers, except where otherwise prescribed, or in respect of the following proceedings and matters, that is to say:-

Exceptions

- (a) All contested applications except with the consent of the parties concerned or their Advocates acting on the Original Side;*
- (b) All applications under rule 11, clauses 1 to 8, 11 and 15 to 17;*
- (c) The making of an order for the issue of a warrant of committal; and also.*
- (d) Applications, matters and proceedings under Chapter XII, rr.1 and 6.*

In terms of the provisions of Original Side Rules, the Registrar or Master of this Court exercising all such authority and jurisdiction under this Rule. Accordingly, the Master has issued writ of summons upon the defendant through the District Judge of Cuttack, Orissa and also sent through speed post. Thus the Judgment relied by the defendant is not applicable in the present case.

Order VIII Rule 1 of the Code of Civil Procedure, 1908 as amended under the Commercial Courts Act read 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 twenty days from the date of service 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".

In the case of **[SCG Contracts India (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.]** reported in **(2019) Vol.12 SCC 210**, the Hon'ble Supreme Court has categorically held that this Court cannot accept the written statement after the outer period of 120 days.

In the present case the writ of summons was served upon the defendant through the process server of the District Court, Cuttack, Odisha on 16th May, 2024 and the writ of summons through the speed post was served upon the defendant on 30th March, 2024. Admittedly, no written statement is filed even within the outer period of 120 days. Merely by submitting that written statement is affirmed will not serve the purpose, unless it is filed in Court or in department. If this Court taking into consideration of service of writ of summons on 30th March, 2024, the outer period of filing written statement by the defendant expires on 29th July, 2024 and if the service is not taking into consideration on 16th May, 2024 outer period of filing written statement of 120 days expired on 15th September, 2024, but neither on or before 29th July, 2024 nor on or before 15th September, 2024, the written statement is filed by the defendant and no written statement is on record.

In view of the above this Court finds that the defendant failed to file the written statement within outer period of 120 days, thus time to file written statement cannot be extended. GA-COM/3/2024 is dismissed.

(KRISHNA RAO, J.)