

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA NO. GA-COM/4/2025
In
CS-COM/564/2024

BRAVO SPONGE IRON PRIVATE LIMITED
VS
BIRAT CHANDRA DAGARA

&

IA NO: GA-COM/4/2025
In
CS-COM/565/2024

SHAKAMBARI ISPAT AND POWER LIMITED
VS
BIRAT CHANDRA DAGARA

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : 2nd April, 2025.

Appearance:

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

1. Mr. Kumarjit Banerjee, learned Advocate, is appearing for the plaintiff.
2. None appears on behalf of the defendant.
3. The defendant has filed an application being GA-COM/4/2025 praying for an order for rejection of plaint in CS-COM/564/2024 or for dismissal of the suit.

4. The defendant has filed the present application on the ground that the writ of summons was served upon the defendant on 30th March, 2025 through postal service but there is no order of this Court for sending the writ of summons through the speed post or/postal service and as such, the service of writ of summons upon the defendant through postal service is not valid in law and as such, the date of service of writ of summons upon the defendant through postal service on 30th March, 2020 cannot be taken into consideration.
5. The defendant has also taken the stand that even the writ of summons which was served upon the defendant on 16th May, 2024 cannot be taken as a proper service as the plaintiff has not obtained appropriate direction from this Court for issuance of writ of summons through the Learned Counsel of District Judge, Cuttack, Orissa.
6. *Per contra*, learned Advocate appearing for the plaintiff submits that the issue raised by the defendant in the present application has already been decided by this Court by an order dated 3rd March, 2025. Counsel for the plaintiff has drawn the attention of this Court to the order dated 3rd March, 2025 wherein the submission the defendant has been recorded as follows:

“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.”

7. Learned counsel for the plaintiff further draws the attention of this Court to the submission made by the learned Counsel for the plaintiff in the said application which reads as follows:

“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.”

8. Counsel for the plaintiff submits that this Court has decided the said issue by an order dated 3rd March, 2025 by holding as follows:

“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.

...

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.”

9. Heard the learned Counsel for the plaintiff. Perused the pleadings of made in GA-COM/4/2025 and the order passed by this Court dated 3rd March, 2025.
10. This Court finds that initially the defendant has filed an application being GA-COM/3/2024 praying for extension of time for filling written statement. The said application was disposed of by an order dated 3rd March, 2025. At the time hearing of the said application, the defendant has taken similar ground that the writ of summons which was served through the postal service was not in accordance with law as there was no order passed by this Court and the writ of summons was served upon the defendant through the learned District Judge, Cuttack, Orissa was also not in accordance with law as there was no order from this Court.
11. This Court by an order dated 3rd March, 2025 has decided the issue and come to the conclusion that in terms of the provisions of

the Original Side Rules, the Registrar or Master of this Court exercising all such authority and jurisdiction under the said Rules, the Master has issued writ of summons upon the defendant through the District Judge of Cuttack, Orissa and also sent writ of summons through the speed post and this Court has refused to grant time to file written statement to the defendant.

12. This Court by an order dated 3rd March, 2025 decided the issue that the writ of summons served upon the defendant in both the ways i.e. through District Court, Cuttack, Orissa as well as through the postal service are in accordance with the law but in spite of having the knowledge of the order dated 3rd March, 2025, the defendant has filed present application on 12th March, 2025.
13. Taking into consideration of the above act of the defendant, this Court finds that only to kill the time and to delay the matter, the defendant has filed the misconceived application.
14. GA-COM/4/2025 is dismissed.

(KRISHNA RAO, J.)