

OCD-26

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/663/2024
IA NO:GA-COM/2/2025

USKOM KOMUNIKASYON SISTEMLERI TAHUT VE TICARET A S
VS
TECHNO ELECTRIC AND ENGINEERING CO

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date: June 12, 2025.

Appearance:

Mr. Samriddha Sen, Adv.

Mr. Sourjya Roy, Adv.

...for the plaintiff

Mr. Aritra Basu, Adv.

Mr. Aman Agarwal, Adv.

Mr. Sanket Sarawgi, Adv.

...for the defendant

1. Mr. Samriddha Sen, learned Advocate, is appearing for the plaintiff.
2. Mr. Aritra Basu, learned Advocate, is appearing for the defendant.
3. Defendant has filed the present application being GA-COM/2/2025 praying for condoning the delay of 89 days in filing written statement to the counter-claim filed by the defendant. Counsel for the plaintiff submits that the defendant has filed the written statement along with the counter-claim on 17th September, 2024, subject to acceptance but the same was accepted by this Court by an order dated 4th October, 2024.

4. Counsel for the plaintiff submits that due to intervening Court holidays on and from 9th October, 2024 to 2nd November, 2024, written statement to the counter-claim could not be prepared within 30 days, i.e., within 3rd November, 2024. He submits that the plaintiff company incorporated in the Republic of Turkey with the registered office at Istanbul due to which, the advocate on record of the plaintiff received all documents only on 31st December, 2024 and on receipt of the same, additional written statement to the counter-claim was prepared and filed on 1st February, 2025 i.e. on the 120th day.

5. Counsel for the plaintiff submits that there is no willful and deliberate delay on the part of the plaintiff as there was vacation and registered office of the plaintiff is outside India, due to the which the Advocate-on-record of the plaintiff received all documents only on 31st December, 2024 for finalization of the written statement to the counter-claim. He prays for condoning delay and for acceptance of the written statement.

6. Learned Counsel for the plaintiff has taken a further additional ground by relying upon the judgment in the case of **A. K. Ghosh and Company and Others vs. Biman Bose and Others**, reported in **2025 SCC Online Cal 1781**, wherein the Hon'ble Appellate Court has held that the period of filing the written statement by the plaintiff in response to the counter-claim filed by the defendant shall be reckoned from the date on which the notice along with the copy of the counter-claim is served by the registry of this Court on the plaintiff or his advocate, as the case may be. He submits that in

the present case, though the defendant has filed the written statement with the leave of this court on 4th October, 2024, but the scrutiny was completed on 24th April, 2025 and the corrected copy of the written statement was served upon the plaintiff on 8th May, 2025, and as such, if going by the timeline fixed by the Hon'ble Division Bench, there is no delay in filing the written statement to the counter-claim.

7. Per contra, learned Advocate appearing for the defendant submits that the written statement was served upon the plaintiff on 18th September, 2024, and as such, time to file written statement has long expired before the 1st February, 2025, thus this court cannot extend the time for filing the written statement to the counter-claim.

8. Learned Counsel for the defendant further raised an objection to the effect that the plaintiff has filed the written statement to the counter-claim by disclosing further documents which is also not permissible under Order XI Rule 3 of the Code of Civil Procedure, as amended, under the Commercial Court Act, 2015. He submits that plaintiff has filed the suit and at the time of filing the suit, the plaintiff has filed all the documents which were in its possession. He relied upon Order XI of the Code of Civil Procedure, as amended, under the Commercial Court Act, 2015 and submits that as per amended provision of the Code of Civil Procedure, the plaintiff has to disclose all the documents, which were in possession of the plaintiff but in the present case, the plaintiff has disclosed the documents along with the counter-claim which were in possession of the plaintiff at the time of filing of the suit but the

plaintiff has not disclosed the said documents and as such the said documents also cannot be taken on record.

9. Learned Counsel for the defendant further raised objection that the judgment passed by the Hon'ble Division Bench is not applicable in the case of the plaintiff as the said guidelines are applicable with effect from 1st March, 2025, but this suit is of 2024 and the written statement was filed prior to the 1st March, 2025.

10. Counsel for the defendant further brought to the notice of this court to the affidavit affirmed by the plaintiff in the written statement to the counter-claim which is on 30th January, 2025, and admittedly the same was filed on 1st February, 2025 and he submits that the written statement was filed on 1st February, 2025, but as per the order passed by the Hon'ble Division Bench, the guidelines are applicable with effect from 1st March, 2025, thus, on the face of the record, the judgment is not applicable in the case of the plaintiff.

11. Heard the Counsel for the respective parties. Perused the materials on record and the judgment relied by the plaintiff.

12. Initially the defendant could not file the written statement within the period of 30 days and accordingly the defendant has taken leave from this Court to file written statement and accordingly on 17th September, 2024, this Court granted leave to the defendant to file the written statement in the department subject to acceptance by this Court and subsequently the application filed by the defendant for extension of time to file written statement was taken up for hearing on 4th October, 2024, and by an order dated 4th

October, 2024, this court accepted the written statement filed by the defendant along with the counter-claim and on the same date the copy of the written statement along with the counter-claim was served upon the plaintiff.

13. This Court finds that the plaintiff has filed the written statement to the counter-claim affirmed on 30th January, 2025, and filed before this court on 1st February, 2025, that is on 120th day.

14. The plaintiff has taken ground in the instant application that though the written statement along with the counter-claim was served upon the plaintiff on 4th October, 2024, but on and from 9th October, 2024, the vacation of this Court starts and it was reopened only on 3rd November, 2024. It is also the ground of the plaintiff that the plaintiff company incorporated in the Republic of Turkey with its registered office at Istanbul and all officers who dealt with the case are residing outside of India and the advocate on record of the plaintiff received all documents only on 31st December, 2024.

15. This court finds that the judgment passed by the Hon'ble Division Bench in the case of **A. K. Ghosh and Company and Others vs. Biman Bose and Others**, is not much relevant in the present case as the plaintiff has filed the additional written statement to the counter-claim on the 120th day along with an application for condoning the delay and acceptance of the written statement. The Hon'ble Division Bench in the guidelines categorically stated that this guideline will be with effect from 1st March, 2025. Though, after the order passed by the Hon'ble Division Bench, the department has scrutinized the written statement filed by the defendant in the month of April, 2025, but

the fact remains the plaintiff has filed the written to the counter-claim on 1st February, 2025. Thus, the order passed by the Hon'ble Division Bench will not apply in the present case. Though the plaintiff has not filed additional written statement to counter-claim within a period of 30 days but has filed the written statement on the 120th day. This court also finds that the plaintiff has shown sufficient cause why the plaintiff could not file the written statement to the counter-claim within the period of 30 days.

16. Considering the above, this court finds that the plaintiff has shown sufficient cause for non-filing of the additional written statement to the counter-claim within 30 days but has filed the written statement within the period of 120 days. Thus, the written statement to the counter-claim filed by the plaintiff is accepted.

17. Now, with regard to the document which the plaintiff has relied along with the additional written statement to the counter-claim. It is admitted that while filing of the suit by the plaintiff, the plaintiff has disclosed the documents and filed the affidavit of document. The plaintiff has disclosed the documents in the counter claim in support of the case made out in the counter-claim. The defendant has raised the question that the documents which the plaintiff has relied upon is prior to filing of the suit and the plaintiff was in possession of the said document. It is the further case of the defendant the facts of the counter-claim and the facts of the written statement and the case made out in the plaint are having similar fact, thus, it cannot be said that the said document is not related to the plaint case.

18. This Court finds that when the plaintiff has filed the suit what the plaintiff intended to rely upon the document has disclosed the same in the plaint. But subsequent to filing of the written statement along with the counter-claim the plaintiff finds that the document which the plaintiff has not relied in the original suit is necessary for the purpose of the counter-claim raised by the defendant and accordingly by way of additional written statement to the counter-claim, the plaintiff has disclosed the said in the additional written statement .

19. Order XI Rule 7 provides that the defendant shall file a list of the documents and photocopies of all documents in its power, possession, control or custody pertaining to the suit along with the written statement or with the counter-claim, if any.

20. In the present case though the plaintiff is the original plaintiff but once the counter-claim has been filed, the plaintiff has become a defendant in the counter-claim and the plaintiff has filed additional written statement to the counter-claim. Once the plaintiff has filed additional written statement to the counter-claim, Order XI Rule 7 will be applicable to the plaintiff with regard to the written statement to the counter-claim and the plaintiff is entitled to disclose documents if any in support of additional written statement to the counter-claim.

21. Thus, it cannot be said that the document relied by the plaintiff in the counter-claim is not acceptable if the document available with the plaintiff at the time of filing of the suit.

22. Considering the above, this Court accepts the said document but subject to proving the said document by the parties at the time of trial of the case.

23. In view of the above, GA-COM/2/2025 is disposed of.

(KRISHNA RAO, J.)

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