

OCD-5

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

IA NO. GA-COM/3/2024
[OLD NO. CS/74/2023]
In CS-COM/494/2024

RAIJADA MARBLES AND ORS.

Vs

ROYALBUILT INFRASTRUCTURE PRIVATE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : September 24, 2024.

Appearance:

Mr. Deepnath Roy Chowdhury, Adv.

Mr. Debraj Sahu, Adv.

Mr. Bhaskar Dwivedi, Adv.

Mr. Hareram Singh, Adv.

Ms. Swagata Ghosh, Adv.

... for the plaintiffs

The Court: Mr. Debraj Sahu, learned counsel, is appearing for the plaintiffs. None appears on behalf of the defendants.

The defendant No.4 has filed an application being GA-COM/3/2024 praying for condoning the delay of 185 days in filing the written statement. When the matter is called, none appears on behalf of the defendants.

It is found from the application that the writ of summons was served upon the defendants on 4th May, 2024 and the present application was filed on 5th September, 2024, that is on 124th day. The suit filed by the plaintiff is commercial in nature.

Order VIII, Rule 1 of CPC as amended under the Commercial Courts Act, 2015 reads 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.”

The defendant has to file the written statement within thirty days and it can be extended till 120 days. The defendant has nowhere mentioned in the application that the defendant has filed the written statement within 120 days. In the case of Scg Contracts India Pvt. Ltd. Vs. Ks. Chamankar Infrastructure Pvt. Ltd. reported in (2019) 12 SCC 210 reported in the Hon'ble Supreme Court has categorically held that this Court shall not allow the written statement to be taken as record.

Admittedly, in the present case, no written statement has filed and the present application was filed on 5th September, 2024 that is after the period of 120th days.

Accordingly, this Court did not find any merit in the application.

GA-COM/3/2024 is dismissed.

(KRISHNA RAO, J.)

