

OCD-36

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

GA-COM/4/2024
[Old No. CS/74/2023]
CS-COM/494/2024

RAIJADA MARBLES AND ORS
-VS-
ROYALBUILT INFRASTRUCTURE PRIVATE LIMITED AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : October 04, 2024.

Appearance:
Mr. Deepnath Roy Choudhury, Adv.
Mr. Debraj Sahu, Adv.
Mr. Bhaskar Dwivedi, Adv.
Mr. Hareram Singh, Adv.
Ms. Swagata Ghosh, Adv.
...For the plaintiff

Mr. Pratip Mukherjee, Adv.
...for the defendant Nos.1, 2 and 3.

The Court : Mr. Deepnath Roy Choudhury, learned Counsel, is appearing for the plaintiff and Mr. Pratip Mukherjee, learned Counsel, is appearing for the defendant Nos.1, 2 and 3.

Counsel for the defendant Nos.1, 2 and 3 has filed the present application being GA-COM/4/2024 praying for condoning the delay of 85 days in filing the written statement.

Counsel for the defendant Nos.1, 2 and 3 submits that writ of summons were served upon the defendant Nos.1 to 3 on 4th May, 2024. Though the defendants have not filed the written statement within the prescribed period of thirty days but affirmed the affidavit as well as present application on 28th August, 2024 that is well within the outer period of 120

days and as such the written statement affirmed by the defendant Nos.1 to 3 may be accepted.

Learned Counsel for the plaintiff raised objection and submitted that admittedly the writ of summons were served upon the defendant Nos. 1 to 3 on 4th May, 2024. As per the record the present application for condoning delay is filed on 5th September, 2024 that is after the period of outer limit of 120 days.

Counsel for the plaintiff further submits that merely affirming the affidavit and not filing it in the Court, cannot be said that the defendant has filed the written statement. No written statement is on record and he prays for rejection of the present application.

Counsel for the defendant Nos.1 to 3 has relied upon the order passed by the co-ordinate Bench of this Court reported in the ***Pratishtha Commercial Private Limited Versus Orissa State Cooperative Milk Producer's Federation Limited*** reported in ***2023 SCC OnLine Cal 1404*** and submitted that in the said case also written statement was affirmed before 120th day but was not on record, the court has extended time to file written statement.

Considered the submissions made by respective parties and perused the application and judgment relied by the defendant Nos.1 to 3. Admittedly, the writ of summons were served upon the defendant Nos.1 to 3 on 4th May, 2024.

Time to file written statement that is within 30 days has expired on 3rd June, 2024.

The outer limit of filing the written statement has expired on 2nd September, 2024.

This Court finds that though the affidavit was affirmed on 28th August, 2024, i.e, within the outer period 120 days but the application was filed on 5th September, 2024 i.e. after the outer period of 120 days. The written statement affirmed on 28th August, 2024 was also not placed on record. Mere affirming an affidavit of written statement without filing in Court or department will no consequences.

Order VIII Rule 1 of the Code of Civil Procedure as amended under the Commercial Courts Act reads as follows:

“*[Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes]

As per S. 16 of Act 4 of 2016, in its application to any suit in respect of a commercial dispute of a Specific Value, in Order VIII, in Rule 1, the proviso, the following proviso shall be substituted, namely:-

"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". [Vide Act 4 of 2016,S. 16 and Sch. (w.r.e.f. 23-10-2015)]”

Admittedly, the defendant Nos.1 to 3 have not filed the written statement within the 120 days. As per the record no written statement is available on record. In the judgment relied by the defendant Nos.1 to 3 ***Pratishtha Commercial Private Limited*** this Court extended the time to file written statement on the ground that affidavit of written statement was affirmed well within outer time limit of 120 days, but this court and another co-ordinate Bench of this Court held that mere affirming an affidavit will no

consequence unless it is brought on record. In the present case though the defendant Nos.1 to 3 have affirmed their written statement and affirmed the present application on 28th August, 2024 but have not taken any leave from this Court to file the said written statement in the department and have not brought the same on record.

The application is filed in the department on 5th September, 2024 that is after the outer limit of 120 days.

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

In the present case also the written statement is not on record and the present application has been filed after the outer period of 120 days. Thus, this Court does not find any merit in the application.

Accordingly, GA-COM/4/2024 is dismissed.

(KRISHNA RAO, J.)