

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

G.A. (COM) No. 2 of 2025

In

C.S. (COM) No. 824 of 2024

(Old No. CS. 33 of 2016)

Roop Shringar Sarees Private Limited

Versus

Sudhir Kumar Satpathy

Mr. Debdut Mukherjee

Ms. Nairanjana Ghosh

Ms. Priyanshi Bainwala

... For the plaintiff.

Mr. Mohit Gupta

Mr. A.P. Agarwalla

Mr. Jit Ray

Ms. Suparna Das

.... For the defendant.

Hearing Concluded On : 23.06.2025

Judgment on : 26.06.2025

Krishna Rao, J.:

1. The defendant has filed the present application being GA (Com) No. 2 of 2025 praying for extension of time to file written statement.
2. Mr. Mohit Gupta, Learned Advocate appearing for the defendant submits that after filing of the suit, the plaintiff has preferred an application being GA No. 289 of 2016 praying for judgment upon admission for a sum of Rs. 19 lakhs by an order dated 18th February, 2016, this Court has allowed the same. He submits that since passing of the judgment upon admission dated 18th February, 2016, the plaintiff has not taken any steps to proceed with the suit till November, 2024 with respect to remaining claim.
3. Mr. Gupta submits that in the third week of November, 2024, the defendant was served with the copy of the Execution Case No. 65 of 2024, for execution of the decree dated 18th February, 2016. On receipt of the said application, the Counsel for the defendant upon verifying the status report of the instant suit on the Website, the defendant came to know that the case is proceeding as “undefended suit” against the defendant.
4. Mr. Gupta submits that by an order dated 4th December, 2024, this Court has transferred the suit of the plaintiff from regular Division to Commercial Division since the dispute is of commercial in nature. After

transfer of the suit, on 6th December, 2024, the Learned Counsel for the defendant by an email, requested the Learned Advocate for the plaintiff for supply of supplementary affidavit filed on behalf of the plaintiff. He submits that inspite of the request made by the defendant, the plaintiff has not served the copy of supplementary affidavit. After transfer of the suit to Commercial Division, the suit is renumbered as C.S. (Com) No. 824 of 2024. After transfer of the suit, the plaintiff has filed Statement of Truth and list of documents and this Court had directed to list the matter on 28th February, 2025 with the liberty to the defendant to file appropriate application.

5. Mr. Gupta submits that as per liberty granted by this Court, the defendant has filed the present application for extension of time as the suit is transferred from the Regular Division to Commercial Division, the defendant will get a fresh period of 120 days to file written statement from the date of order of the transfer of the suit.
6. Mr. Gupta has relied upon an unreported judgment in the case of ***Pestcon Engineering Industries Limited & Ors. vs. Jainco Projects (India) Ltd. & Ors.*** passed in ***GA (Com) No. 6 of 2024 in CS (Com) No. 783 of 2024*** dated ***12th February, 2025*** wherein the Coordinate Bench of this Court has allowed the defendant to file written statement subject to payment of cost of Rs. 25,000/- after transfer of suit from Regular Division to Commercial Division.

7. Mr. Gupta has further relied upon the judgment in the case of ***Raj Process Equipments and Systems Pvt. Ltd. vs. Honest Derivatives Pvt. Ltd.*** reported in ***2022 SCC OnLine SC 1877*** wherein the Hon'ble Supreme Court relying upon the decision in the case of ***Salem Advocate Bar Association vs. Union of India***, allowed the defendant to file written statement.
8. *Per contra*, Mr. Debdut Mukherjee representing the plaintiff submits that the suit was filed in the year 2016 being CS No. 33 of 2016 and writ of summons was duly served upon the defendant but inspite of receipt of writ of summons, the defendant has not filed written statement. In the meantime, the plaintiff has also filed an application for judgment upon admission and accordingly the Hon'ble Court has granted part decree for an amount of Rs. 19 lakhs as prayed for by the plaintiff.
9. Mr. Mukherjee submits that since 2016, till the filing of the present application i.e. on 12th February, 2025, the defendant has not taken any steps for filing of written statement. He submits that the defendant has not shown any cause as to why the defendant has not filed written statement since the year 2016, though the writ of summons was duly served upon the defendant and the defendant entered appearance through Learned Advocate.
10. Mr. Mukherjee submits that the defendant has filed the present application on the misconception of law that the suit is transferred

from the Regular Division to Commercial Division and thus the defendant will get a fresh period of 120 days to file written statement from the date of the order of transfer.

11. Mr. Mukherjee submits that there is no such law that after the transfer of the suit from Regular Division to Commercial Division, the defendant will get 120 days for filing of the written statement. He submits that in the instant application, he has not shown any reason as to why the defendant has not filed written statement since the year 2016, though the Court has also passed part decree of the admitted claim of the defendant.
12. Mr. Mukherjee submits that the judgment of ***Salem Advocate Bar Association, T.N. vs. Union of India*** reported in ***(2005) 6 SCC 344***, the Hon'ble three Judges Bench of the Supreme Court has held that Order VIII, Rule 1 of the Code of Civil Procedure, 1908, is directory and not mandatory but the present suit is before the Commercial Division and as per the amended provisions of Order VIII Rule 1 of CPC under the Commercial Courts Act, 2015, no written statement can be accepted after the period of 120 days.
13. Mr. Mukherjee submits that in the case of ***Raj Process Equipments & Systems Pvt. Ltd. & Ors. (supra)***, the Hon'ble Supreme Court finds that the plaintiff has filed the suit in the month of December, 2017 and the summon was served on 16th February, 2018 and subsequently, on 11th August, 2018, the case was transferred to the Commercial Division

and as such the Hon'ble Supreme Court has taken the lenient view and allowed the defendant to file written statement but the facts of the present case are distinguishable as in the present case, the defendant has received writ of summons in the year 2016 but has not filed written statement and the defendant has also not shown any cause as to why the defendant has not filed the written statement.

- 14.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the defendant. The plaintiff has filed the suit being CS No. 33 of 2016 and the writ of summons was served upon the defendant on 21st March, 2016. In the meantime, the plaintiff has filed an application being GA No. 289 of 2016 praying for judgment on admission and the Court by an order dated 18th February, 2016, has allowed the part claim of the plaintiff for a sum of Rs. 19 lakhs together with interest @ 6% from the date of demand notice till realization and the remaining claim of the plaintiff is pending for adjudication.
- 15.** The defendant has received writ of summons on 21st March, 2016 but has not taken any steps. In the meantime when the plaintiff has proceeded the suit for further claim, the plaintiff came to know that the claim of the plaintiff is of commercial in nature and accordingly the Court by an order dated 4th December, 2024, has transferred the suit from Regular Division to Commercial Division and directed the department to take appropriate steps.

- 16.** The plaintiff has relied upon the report of the Deputy Registrar (Legal) dated 11th November, 2024 wherein it reveals that the defendant has entered appearance on 8th March, 2016 in the suit and further report issued by the Deputy Registrar (Legal) dated 20th November, 2024, reveals that no written statement has been admitted by the Learned Master and the Official Referee till 20th November, 2024.
- 17.** By an order dated 4th December, 2024, the suit has been transferred to this Court. Now, the defendant has filed the present application for extension of time to file written statement. The defendant has not shown any cause as to why though the defendant had entered appearance in the suit before the Regular Division but had not filed written statement. The only reason given by the defendant in paragraph 13 of the present application which reads as follows:

“13. The defendant states and submits it has now been settled that if a suit in the nature of a commercial dispute has been transferred from the Regular Division to the Commercial Division, the defendant will get a fresh period of 120 days to file the written statement from the date of the order of such transfer.”

- 18.** This Court did not find any such proposition as stated by the defendant. Proviso of Section 15 of Commercial Courts Act, 2015, reads as follows:

“Section 15: Provided that proviso to Sub-Rule 1 of Rule 1 of Order V of the Code of Civil Procedure, 1908, shall not apply to such transferred suit or application and the Court may, in its discretion, prescribe a new time period within which the written statement shall be filed.”

- 19.** By an order dated 4th December, 2024, the Court has transferred the suit to this Court (Commercial Division) and the said order was passed in presence of the defendant. Immediately on 6th December, 2024, the defendant has sent an email to the Learned Counsel for the plaintiff requested to supply a copy of supplementary affidavit filed as per order dated 25th November, 2024 passed by the Court. The plaintiff has not responded to the said email. The matter was listed before the Commercial Court on 16th January, 2025 and on the said date, the Counsel for the plaintiff has filed Statement of Truth and list of documents and directed to list the matter on 28th February, 2025 for further order, this Court has also granted leave to the defendant to file application. On 30th January, 2025, the defendant has affirmed the present application and filed the same on 12th February, 2025.
- 20.** Though the defendant has not shown the cause for non-filing of the written statement since the year 2016 when the suit was pending before the Regular Division. The suit was transferred from Regular Division to this Court by an order dated 4th December, 2024. On 6th December, 2025, the defendant has requested the plaintiff for supply of supplementary affidavit but the same was not served and on 16th January, 2025, the plaintiff has filed Statement of Truth and list of documents in compliance of provisions of the Commercial Courts Act, 2015 but the plaintiff has not served the amended plaint, Statement of Truth and affidavit of documents to the defendant.

- 21.** The defendant has already suffered part decree for a sum of Rs. 19 lakhs along with interest @ 6% per annum. Now, the remaining claim of the plaintiff is to be decided after evidence. The part decree was allowed when the suit was pending before the Regular Division. Now, the suit has been transferred to Commercial Division. The defendant intending to contest the suit by filing written statement. The suit is transferred by an order dated 4th December, 2024 and 6th December, 2024, the defendant had requested to plaintiff for supply of supplementary affidavit but has not supplied. After transfer, the plaint was also amended and the Statement of Truth and list of documents were filed by the plaintiff, but the same has not been served upon the defendant.
- 22.** Considering the above, this Court finds that the defendant should be given an opportunity to file written statement subject to payment of cost of Rs. 50,000/- to the plaintiff within one week from date. The plaintiff is directed to serve the amended plaint, Statement of Truth and all documents to the defendant within a period of one week and on receipt of the same, the defendant shall file the written statement within two weeks thereafter.
- 23. GA (Com) No. 2 of 2025 is disposed of.**

(Krishna Rao, J.)