

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA NO. GA-COM/2/2026
In CS-COM/114/2025**

**RAM SEVAK SHAW AND ANR.
Vs
M/S. EASTERN TRACK UDYOG
PRIVATE LIMITED**

For the plaintiff : **Mr. Sayntan Chatterjee, Adv.
Mr. Anirban Ghosh, Adv.**

For the defendant : **Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Varun Kothari, Adv.
Mr. A. Choudhury, Adv.
Ms. Uma Bagree, Adv.**

Heard on : **January 29, 2026**

Judgment on : **January 29, 2026
[In Court]**

ANIRUDDHA ROY, J. :

FACTS:

1. The Master Summons has been taken out by the defendant praying for extension of time to file written statement beyond the mandated 30 days but within the mandated 120 days, as mandated under the

amended provisions of **Rule 1 to Order VIII of Code of Civil Procedure, 1908.**

2. The report of the Deputy Sheriff dated **January 7, 2026** at **page 9** to the supporting affidavit shows that the writ of summons was served upon the defendant on **September 29, 2025. 30 days** expired on **October 29, 2025** but according to the defendant, on **October 28, 2025**. The application has been taken out on **January 16, 2026**. The mandated **120th day** expired on **January 27, 2026** but according to the defendant, on **January 26, 2026**.

SUBMISSIONS:

3. Mr. Sayantan Chatterjee, learned Advocate appearing for the plaintiff first submits that today when the application is being considered is beyond 120 days from the date of service of summons, the Court is *functus officio*. His second limb of submission is that sufficient cause is not shown in the application.
4. Mr. Jishnu Chowdhury, learned Senior Advocate with Mr. Varun Kothari, learned Advocate appearing for the defendant has opposed the submissions made on behalf of the plaintiff. Learned Senior Advocate submits once the application has been filed within the mandated 120 days from the date of service of summons, the pendency of this application shall not harm the applicant.
5. In support of his contention, learned Advocate for the plaintiff has relied upon the following judgments:-

(a) A judgement of this Court dated December 17, 2025

In the matter of: Veeline Holdings Private Limited Vs.

Khetawat Properties Limited rendered in IA No. GA-

COM/2/2025 in CS-COM/825/2024 and

(b) In the matter of: SCG Contracts (India) Private Limited Vs. K.S. Chamankar Infrastructure Private Limited And Others reported at (2019) 12 Supreme Court Cases 210.

6. Accordingly, the plaintiff prays for dismissal of this application.

DECISION:

7. After considering the rival contention of the parties and upon perusal of the materials on record, it appears to this Court that two dates are at least admitted by the parties, as would be apparent from record, with regard to the date for service of summons and filing of the instant application. Admittedly, the instant application has been filed sometime on or about 109th or 110th day from the date of service of summons and definitely not beyond 120 days.

8. ***In the matter of: Veeline Holdings Private Limited (supra),*** the application itself was filed beyond 120 days when the Court became *functus officio*. Therefore, the ratio decided in the said judgment has no application in the facts and circumstances of this case.

9. Insofar as the explanations and reasons furnished by the defendant in the supporting affidavit, on perusal of the averments made therein, it appears to this Court that sufficient reasons have been shown. The plaintiff has raised an objection with regard to the explanation of 5 days from the period allegedly within the initial period of 30 days and thereafter the whole period.
10. This Court is of the view that, to file written statement in an adversarial litigation is a matter of right for the defendant unless prohibited otherwise by law. Right to file the written statement is a valuable right of the defendant in conformity with the elementary principle of natural justice. Substantive right cannot be taken away for procedural laches.
11. Upon reading the averments made in the supporting affidavit, it appears to this Court that the defendant had proceeded *bona fide* and with due diligence. The delay has been sufficiently explained.
12. The defendant has also taken out an application for revocation of leave under Clause 12 of the Letters Patent. The said application is pending. When the said application was moved, this Court has passed its order that pendency of that application shall not preclude the defendant to file its written statement in accordance with law and without prejudice to its rights and contentions. Therefore, the ratio ***In the matter of: SCG Contracts (India) Private Limited (supra)*** has no application in the facts of the instant case.

13. In view of the foregoing reasons and discussions, this Court is of the firm view that sufficient cause has been shown and the defendant shall be permitted to file its written statement in the department, subject to payment of costs of **Rs.20,000/-** to be paid by the defendant in favour of the **State Legal Services Authority, West Bengal**, positively within **a week** from date.

14. The defendant shall be at liberty to tender and file the written statement in the department by **tomorrow** and the department shall accept the same on record.

15. The defendant then shall produce a copy of the money receipt showing payment of costs before the department and a copy to the learned Advocate on Record for the plaintiff immediately upon payment of costs.

16. It is made clear that, if the costs is not paid, the written statement so to be filed shall be returned and taken off the file by the department and no cognizance shall be taken thereupon henceforth and the suit shall be treated as an undefended suit against the defendant.

17. With the above observations and directions, this application **IA No.GA-COM/2/2026** stands **allowed**.

(ANIRUDDHA ROY, J.)

RS