

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

Present:

The Hon'ble Justice Krishna Rao

G.A. (Com) No. 2 of 2024

In

C.S. (Com) No. 712 of 2024

Skipper Limited

Versus

Prabha Infrastructure Private Limited

Mr. Sayantan Bose

Mr. Shounak Mukhopadhyay

Ms. Manisha Das

... For the plaintiff.

Mr. Ritoban Sarkar

Mr. Dilwar Khan

Mr. Soupayan Sinha Roy

Ms. Apple Mughali Jimo

... For the defendant.

Hearing Concluded On : 16.09.2025

Judgment on : 22.09.2025

Krishna Rao, J.:

1. The defendant has filed the present application being G.A. (Com) No. 2 of 2024 praying for extension of time to file the written statement. The writ of summons was served upon the defendant on 24th July, 2024. The defendant ought to have filed the written statement by 23rd August, 2024 but the defendant failed to file the written statement.
2. Mr. Ritoban Sarkar, Learned Advocate representing the defendant submits that though the defendant could not file the written statement within the statutory period of 30 days but has affirmed the written statement on the 120th day i.e. on 21st November, 2024 and has also enclosed the copy of the written statement along with the present application.
3. Mr. Sarkar submits that immediately upon receipt of the writ of summons, the defendant requested the Accounts Manager of the defendant for his advice and instructions as he was aware of the facts and circumstances of the suit filed by the plaintiff. On 5th August, 2024, the Board of Directors of the defendant convened a meeting and thereafter on 8th August, 2024, the defendant sought for advice from the Learned Advocate. As per advice of the Learned Advocate, the defendant has provided documents and after perusing documents, the Learned Advocate informed the defendant that in the purchase order contains forum selection clause and the Court of Varanasi is having

jurisdiction and advised to file an application challenging the maintainability of the suit.

4. Mr. Sarkar submits that in the meantime, the plaintiff has filed an application being G.A. No.1 of 2024 praying for judgment upon admission or in the alternative to furnish security. The application filed by the plaintiff was contested by the defendant and by an order dated 30th August, 2024, this Court directed the defendant to secure the principal amount.
5. Mr. Sarkar submits that the defendant was advised to prefer an appeal against the order passed by this Court, simultaneously to file the written statement and accordingly, all the connected documents were collected and conferences were held but in the meantime, the Court closed for “Puja Vacation” from 9th October, 2024 to 3rd November, 2024. After reopening of the Court, the written statement was finalized on 18th November, 2024.
6. Mr. Sarkar submits that the written statement was affirmed on 21st November, 2024 i.e. the 120th day after receipt of writ of summons and the same was annexed with this present application and the present application was filed on 29th November, 2024. He submits that though the present application was also affirmed on 21st November, 2024 but due to the procedure for filing of the affidavit along with Master Summons, it took time and finally filed on 29th November, 2024.

7. Mr. Sarkar submits that the written statement is affirmed within the 120th day and is annexed with the instant application which proves that the defendant has filed the written statement within the outer period of 120 days. He relied upon the judgment in the case of ***Pratishtha Commercial Private Limited Vs. Orrisa State Cooperative Milk Producer's Federation Limited*** reported in **2023 SCC OnLine Cal 1404** and submitted that in the said case also the 120th day expired on 18th May, 2023 and the defendant has affirmed written statement on 18th May, 2023, the Coordinate Bench has allowed the defendant to file written statement in the department.

8. Mr. Sarkar relied upon the order passed by this Court in the case of ***The Roman Catholic Archdiocese of Calcutta and Ors. Vs. Creative Consultants*** in **C.S. (Com) No. 7 of 2023** dated **10th September, 2024** and submits that in the said case also this Court has granted leave to the defendant to file the written statement within 120 days but the defendant has not filed the written statement within 120 days and the written statement was not on record, accordingly, the prayer of the defendant for extension of time to file written statement was refused but in the present case, the defendant has affirmed written statement within 120 days and annexed the written statement with this application.

9. Mr. Sarkar submits that the order passed by this Court in the case of ***The Roman Catholic Archdiocese of Calcutta (Supra)*** was

challenged before the Appellate Court and the Appellate Court has allowed the defendant to file the written statement.

- 10.** Mr. Sayatan Bose, Learned Advocate representing the plaintiff submits that though the defendant has affirmed the written statement on the 120th day but has not filed the written statement either before this Court or in the department within the outer period of 120 days, thus in the eye of law, there was no written statement on record within the outer period of 120 days.
- 11.** Mr. Bose submits that as per the amended provisions of Order VIII, Rule 1 of the Code of Civil Procedure, 1908 under the Commercial Courts Act, 2015, if the written statement is not filed within the outer period of 120 days, it is not open for this Court to accept the written statement.
- 12.** Mr. Bose submits that mere affirmation of affidavit of the written statement does not amount to filing of the written statement. He submits that though the plaintiff contends that the written statement was affirmed on 21st November, 2024 but the plaintiff has not filed the same either in the department or before this Court and has also not taken leave from this Court. He submits that the defendant has filed the present application by enclosing the written statement only on 29th November, 2024 and if presumed that the defendant has filed written statement on 29th November, 2024, the same will be after the period of 120 days, thus the written statement cannot be accepted.

13. Mr. Bose relied upon the judgment in the case of ***Fox & Mandal vs. Somabrata Mandal & Ors.*** in ***C.S. (Com) No. 408 of 2024*** dated ***14th June, 2024*** and submits that in the said case, this Court held that time for filing the written statement in commercial suit is mandatory in nature and court lacks discretions to condone the delay for filing written statement after the period of 120 days.
14. Mr. Bose submits that the judgment relied by the defendant in the case of ***Creative Consultants (supra)***, the Appellate Court has passed the said order without jurisdiction as the rejection for acceptance of written statement is not an appealable order.
15. Heard the Learned Counsel for the parties, perused the materials on record. The defendant has received the writ of summons on 24th July, 2024. The defendant ought to have filed written statement by 23rd August, 2024. If further 90 days period is taken into consideration, the defendant ought to have filed the written statement by 21st November, 2024 with the leave of this Court. The defendant has affirmed the affidavit of written statement on 21st November, 2024 but has not filed the same either in the department or before this Court. The defendant has filed the present application by enclosing the written statement with the prayer for condoning the delay and for acceptance of written statement on 29th November, 2024 i.e. after 8 days of outer period of 120 days.

16. Now, the issue is mere affirmation of the written statement on or before 120th day but has not filed the same either in the Court or in the department will amount to file the written statement by the defendant within 120 days.
17. Order VIII, Rule 1 of the Code of Civil Procedure, 1908, 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.”

18. In the case of **SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited & Ors.** reported in **(2019) 12 SCC 210**, the Hon’ble Supreme Court held that the Court has no power to extend the time beyond the period of 120 days to file written statement. The defendant has relied upon the definition of the word “Filed” from the Stroud’s Judicial Dictionary and the definition of “Filed” reads as follows : *“‘Filed’ held to be included in return of non est inventus. A document is “filed” when delivered to the proper officer to be filed”.*

The defendant also relied upon the definition of “File” from Words and Phrases which reads as follows:

“File– the word “filing”, in reference to matters of practice, is very commonly used to express the duty of bringing to the proper office, as the case may be, writs, pleadings, affidavits and other such matters for safe custody, or enrolment. The duty of filing in this sense may be properly considered as included under the word “returning”. *Hunter versus Caldwell* (1847) 10 QB 60 at 81, per cur.

The Act [Section 14 of the Companies Act, 1900 (repealed; of now Companies Act, 1985, Section 395, where the word ‘file’ is no longer used)] says . . . “(d) a floating charge on the undertaking or property of the company, shall . . . be void against the liquidator and any creditor of the company, unless, filed with the registrar for registration . . . within twenty-one days after the date of its creation . . .” . . . “Filed with the registrar” really means “supplied to the registrar for registration” or furnished to the registrar for registration.”’ *Re Yolland, Husson & Birkett Ltd, Leicester vs. Yolland Husson & Birkett Ltd* (1908) 1 Ch 152 at 157, CA, per Cozens - Hardy MR.”

19. The contention of the defendant that the defendant has affirmed the affidavit of written statement on 21st November, 2024 i.e. 120th day from the date of receipt of the writ of summons. The defendant has also affirmed the present application on 21st November, 2024. The application contains the copy of the written statement. The defendant filed the application by enclosing the written statement in the department on 29th November, 2024. It is admitted by the defendant that the defendant has filed the present application on 29th November, 2024. The definition as relied upon by the defendant from “Stroud’s

Judicial Dictionary” and “Words and Phrases”, it is clear that the word ‘Filed’ means deliver to the proper officer.

20. In the Black’s Law Dictionary, 10th Edition, the meaning of “File” is recorded as “to deliver a legal document to the court clerk or record custodian for placement into the official record. From the dictionary meaning “Filed” and “File” suggest that the document is to be placed in the official record or to be delivered to the proper officer. The case of the defendant that affidavit of the written statement was affirmed on 21st November, 2024 but after the affirmation, the said written statement was not filed in the department or in the Court.
21. Affirmation of affidavit of written statement does not amount to filing. The defendant has filed the present application on 29th November, 2024 in which the defendant has enclosed the written statement. So the date of filing is to be considered as 29th November, 2024 and not as 21st November, 2024. The application filed by the defendant contains Presentation Form, from which it is clear that the application was filed on 29th November, 2024.
22. The facts of the order relied upon by the defendant in the case of ***Pratishtha Commercial Private Limited (supra)***, are distinguishable from the facts of the present case as in the said case, the defendant has affirmed the written statement on 18th May, 2023 i.e. within 120 days from the date of receipt of writ of summons and the Coordinate Bench is allowed to file the same in the department and subsequently the

same was accepted as the Court has found the endorsement of the Assistant Registrar of this Court on the written statement on 18th May, 2023 i.e. 120th day. But in the said case, the defendant has not filed the same either in the department or in the Court to prove that the written statement was filed within 120 days from the date of receipt of writ of summons.

- 23.** The defendant has filed the application on 29th November, 2024 by enclosing the written statement which was affirmed on 21st November, 2024, which cannot be treated that the defendant has filed the written statement on 120th day. The date of filing is taken into consideration from 29th November, 2024 and not from 21st November, 2024. Thus it is clear that the defendant has not filed written statement within the outer period of 120 days.
- 24.** As the defendant has not filed the written statement within the outer period of 120 days, thus this Court lacks the discretion to condone the delay in filing the written statement after the period of 120 days.
- 25.** In view of the above, **G.A. (Com) No. 2 of 2024** is **dismissed**.

(Krishna Rao, J.)