

OCD- 3

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE

AO-COM/29/2024
WITH CS-COM/7/2023

CREATIVE CONSULTANTS
VS.
THE ROMAN CATHOLIC ARCHDIOCESE OF CALCUTTA AND ORS

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date: 4th December, 2024.

Appearance:
Mr. Mainak Bose, Sr. Adv.
Ms. Somoshree Saha, Adv.
Mr. Laxmi Nath Bhattacharya, Adv.
Mr. Sanjib Kumar Ghosh, Adv.
...for the Appellant/Defendant.

Mr. Rishabh Karnani, Adv.
Mr. Sourath Dutt, Adv.
Mr. Sanjay Kumar Baid, Adv.
...for the Respondents.

The Court : The appeal is arising out of an order dated 10th September, 2024 in connection with an application filed by the appellant for acceptance of the written statement upon condoning the delay of 93 days. It is an admitted fact that the written statement was affirmed on 14th August, 2024, i.e. 115th days and a notice was served upon the solicitor of the plaintiffs for mentioning of the matter before the learned Single Judge on 14th August, 2024 for acceptance of the written statement. It has not been disputed from the Bar that the matter was not mentioned as the Solicitor of

the plaintiffs was unavailable and a request to that effect was made to the Solicitor of the defendant-appellant. On a further notice being served for mentioning on 19th August, 2024, the matter was mentioned in presence of the learned Advocate for the plaintiffs. On that date, the learned Single Judge has directed the appellant to take out a formal application for acceptance of the written statement. The 120th day being the outer limit for filing of the written statement in terms of amended Order VIII of the Code of Civil Procedure expired on that date. However, it has been fairly submitted on behalf of the learned Advocate for the plaintiffs that the prayer for acceptance of the written statement on the 120th day was not opposed by the plaintiffs. The learned Counsel appearing on behalf of the plaintiffs however submits that in between a Master's Summons could have been taken out under Order IX Rule 2 of the Original Side Rules. It appears on 28th August, 2024 the summons was taken out. The time to file written statement under amended Order VIII Rule 1 expired in the meantime. Under the amended provision, on the failure of the defendant to file the written statement within a period of 30 days, the Court has a discretion to allow a party to file the written statement on such other day for the reasons to be recorded in writing and on payment of such costs as the Court deems fit, however, the outer limit for filing such written statement has been mentioned as 120 days from the date of service of summons and on expiry of 120 days from the date of service of summons, the defendant would forfeit the right to file written statement. Beyond this period the Court shall not allow the written statement to be taken on record. Although judgments have been cited by the learned Advocate for the plaintiffs to show that affirmation of the written statement prior to expiry of 120 days is immaterial and

inconsequential, a closer scrutiny of the judgments would show that in all such matters the written statements were prepared after 120th day. We have not come across any decision where in a similar situation the Court has declined to exercise its jurisdiction to extend the time when the written statement was tendered and presented on or before the 120th Day.

In our view, it is relevant for the present purpose to take into consideration that the written statement was ready on 14th August, 2024 and for the reasons mentioned hereinabove, the party was prevented from filing the written statement within the extended time for which we feel that the appellant should not suffer. Moreover, on 19th August, 2024 the plaintiff did not oppose the prayer for extension of time to file the written statement. It is true that the Court, in the event of extending the period beyond 30 days would be required to record a reason, but having regard to the fact that the objection to that effect is likely to come from the plaintiffs, which not being raised and having regard to the fact that it was within the outer limit of 120 days, the Court could have exercised its discretion and allow the written statement to be taken on record by recording the consent of the plaintiffs and for any other reason that the Court may deem fit and proper in allowing such prayer on payment of costs.

On such consideration, we permit the appellant to file the written statement on or before 7th December, 2024 upon payment of costs of Rs.50,000/- in favour of the plaintiffs in the meantime, failing which, the appellant shall forfeit the right to file the written statement.

We make it clear that in the event the costs are not paid to the plaintiff No. 1 within the aforesaid period, the learned Single Judge may proceed with the hearing of the suit as an undefended suit. We further make

it clear that a demand draft or banker's cheque of Rs.50,000/- drawn in favour of the plaintiff No. 1 shall be forwarded to the Solicitor of the plaintiffs within the aforesaid time and in the event such demand draft/banker's cheque is tendered to the Solicitor of the plaintiffs, it shall be considered to be a valid tender in terms of this order.

The Department shall not accept the written statement without proof of payment of costs.

Accordingly, the appeal is disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J)

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