

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Hiranmay Bhattacharyya

CO 2225 of 2025

M/s. PIL India Private Limited

Versus

Krishna Agrotech Limited & Anr.

For the petitioner : Mr. Chayan Gupta
Mr. Souvik Kundu

For the opposite party : Mr. Aniruddha Mitra, Sr. Advocate
Mr. Dipnath Roy Chowdhury
Mr. Debraj Sahu
Mr. Hareram Singh

Heard on : 21.07.2025

Judgement on : 21.07.2025

Hiranmay Bhattacharyya, J.:

1. This application under Article 227 of the Constitution of India is at the instance of the second defendant and is directed against an order dated February 21, 2025 passed by the learned Judge, Commercial Court at Alipore in T. S. (COM) 33 of 2022.

2. By the order impugned, applications being IA 1 of 2022 and IA 2 of 2022, stood rejected.

3. IA 1 of 2022 was an application filed by the defendant no. 2 for condonation of delay in filing the written statement and IA 2 of 2022 is an application praying for recalling the order of ex parte hearing.

4. The opposite party no. 1 herein filed a suit praying for a decree of recovery of money and for other consequential reliefs before the learned Civil Judge (Sr. Division), 2nd Court at Alipore and the same was registered as Title Suit No. 70 of 2016.

5. The petitioner herein appeared in the suit and filed two applications, one under Order 7 Rule 11 of the Civil Procedure Code and the other under Order 12 Rule 6 of the Civil Procedure Code. The application under Order 7 Rule 11 of the Civil Procedure Code stood rejected by an order dated June 11, 2018. The said order was challenged in a civil revision application being CO 2372 of 2018 and a coordinate bench of this court, by an order dated November 5, 2019, dismissed the same and directed the learned trial judge to dispose of the application under Order 12 Rule 6 of the Civil Procedure Code expeditiously.

6. The learned trial judge, by an order dated December 17, 2019, rejected the application under Order 12 Rule 6 of the Civil Procedure

Code and fixed the suit for ex parte hearing against the 2nd defendant/petitioner herein. The said order was challenged by the petitioner by filing an application under Article 227 of the Constitution of India being CO 272 of 2020 which was dismissed by an order dated February 6, 2020. After dismissal of CO 272 of 2020, the petitioner herein filed a written statement along with an application for condonation of delay in filing the said written statement. The written statement was kept with the record and a date was fixed for hearing of such application. The petitioner herein also filed an application praying for recalling of the order of ex parte hearing.

7. Title Suit No. 70 of 2016 was thereafter transferred to the Commercial Court at Alipore and the same was renumbered as T. S. (COM) 33 of 2022. After the suit was transferred, the application praying for condonation of delay in filing the written statement, was registered as IA 1 of 2022 and the application for setting aside the ex parte order was registered as IA 2 of 2022.

8. The learned Judge, Commercial Court by the order impugned, rejected the aforesaid applications being IA 1 of 2022 and IA 2 of 2022.

9. Being aggrieved, the 2nd defendant has approached this court with the present civil revision application.

10. Mr. Gupta, learned advocate appearing for the petitioner submits that the coordinate bench while passing the order dated February 2, 2020 in CO 272 of 2020, gave liberty to the petitioner to file the appropriate application for taking off the suit from the ex parte hearing board and for allowing the petitioner to file written statement beyond the statutory period of 120 days accompanied by an appropriate application showing cause as to why the written statement should be accepted beyond the prescribed period. He further submits that pursuant to the liberty granted by the coordinate bench in CO 272 of 2020, the petitioner filed the written statement along with an application for condonation of delay as well as an application for taking off the suit from the ex parte board. Mr. Gupta submits that the learned Judge, Commercial Court rejected the aforesaid applications by relying upon the decision of the Hon'ble Supreme Court in the case of ***SCG Contracts India Private Limited -Vs.- K. S. Chamankar Infrastrucutre Limited, reported in (2019) 12 SCC 210*** without appreciating the fact that the said decision is applicable only to suits filed before the commercial court and not to suits which have been transferred from normal courts to the commercial court. In support of the contention that the proposition of law laid down in *SCG Contracts India Private Limited (Supra)*, cannot be applied to the transferred suit, Mr. Gupta places reliance upon a decision of the Hon'ble Supreme Court in the case of ***Raj Process Equipments and Systems Pvt. Ltd & Anr. -Vs.- Honest Derivatives Pvt. Ltd., reported at 2022 SCC***

OnLine SC 1877 and a decision of the coordinate bench in the case of *Sayan Sarker -Vs.- Austin Distribution Private Limited*, reported in AIR 2021 Cal 169.

11. Per contra, Mr. Mitra the learned Senior Advocate appearing for the opposite parties submits that the petitioner after entering appearance in the said suit on January 27, 2017 prayed for time for filing written statement and the learned trial judge granted time to the 2nd defendant to file the written statement but the petitioner did not file the written statement within the time granted by the learned trial judge and instead chose to file frivolous applications under Order 7 Rule 11 of the Civil Procedure Code and Order 12 Rule 6 of the Civil Procedure Code only to delay the hearing of the suit. He further submits that the petitioner has put the blame on the shoulder of the learned advocate as a ground for condonation of delay when the learned advocate cannot be said to be at fault. He submits that unless a satisfactory explanation for condonation of delay and/or for extension of time to file the written statement is allowed, the court cannot mechanically extend the time for filing the written statement. He submits that the petitioner should not be allowed to file the written statement at such a belated stage.

12. Heard the learned advocates for the parties and perused the materials placed.

13. The instant suit for recovery of money was filed in the year 2016 before the normal Court. It is not in dispute that the Commercial Court at Alipore, District 24 Parganas (South) started functioning for hearing commercial suits in the district of 24 Parganas (South) long after the institution of the instant suit.

14. Record reveals that the petitioner herein filed an application under Order 12 Rule 6 of the Civil Procedure Code on May 16, 2017. The said application was fixed for passing orders on December 17, 2019. The learned Civil Judge (Sr. Division), 2nd Court at Alipore by an order dated December 17, 2019 rejected the said application on contest.

15. It appears from the order dated December 17, 2019 that the 2nd defendant was heard on that date. However, the learned trial judge after rejecting the application under Order 12 Rule 6 of the Civil Procedure Code fixed the suit for ex parte hearing against the defendant no. 2 on the ground that the 2nd defendant in spite of entering appearance in the suit on March 7, 2017, did not file written statement till that date.

16. Order IX of the Civil Procedure Code deals with the appearance of parties and consequence of non-appearance. Order 9 Rule 6 of the Civil Procedure Code deals with the procedure when only plaintiff appears. It states that where the plaintiff appears and the defendant

does not appear when the suit is called on for hearing, then if it is proved that the summons was duly served, the court may make an order that the suit be heard ex parte.

17. Therefore, Order 9 Rule 6 of the Code enables the court to make an order that the suit be heard ex parte when the suit is fixed for hearing and the plaintiff appears and the defendant does not appear when the suit is called on for hearing.

18. Record reveals that the suit was fixed for ex parte hearing, by an order dated December 7, 2019, and it is evident from the said order that such date was fixed for hearing of an application under Order 12 Rule 6 of the Code and defendant no. 2 had appeared in support of the application under Order 12 Rule 6 of the Civil Procedure Code. Thus, the basic foundation for invoking the power under Order 9 Rule 6 of the Civil Procedure Code for fixing the suit for ex parte hearing was lacking in the case on hand. To the mind of this court, the learned Civil Judge (Sr. Division), 2nd Court at Alipore could not have fixed the suit for ex parte hearing on December 17, 2019 as the 2nd defendant appeared on that date.

19. Order 9 Rule 7 of the Civil Procedure Code deals with the procedure when the defendant appears on the date of adjourned hearing and assigns good cause for previous non-appearance. It provides that where the court had adjourned the hearing of the suit ex

parte, and the defendant, on or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard and answer to the suit as if he had appeared on the day fixed for his appearance.

20. From a bare reading of the provisions of Order 9 Rule 7 of the Civil Procedure Code it is evident that if the defendant appears on a date fixed for ex parte hearing he has a right to participate in the suit from that stage even without assigning good cause. It is only if the defendant wants himself to be relegated to the position that he was as on the date when the suit was fixed for ex parte hearing, then the defendant is required to assign good cause for his previous non-appearance.

21. In the case on hand, it has already been observed that the petitioner was present on December 17, 2019, i.e., on the date when the learned trial judge fixed the suit for ex parte hearing. It has already been held that the provisions of Order 9 Rule 6 of the Civil Procedure Code do not stand attracted to the case on hand, this court is of the considered view that the petitioner was not also required to assign good cause for being relegated to the position as he was as on the date of fixing the suit for ex parte hearing.

22. The learned advocate appearing for the opposite party would vehemently contend that the petitioner herein challenged only the portion of the order dated December 17, 2019 by virtue of which the application under Order 12 Rule 6 of the Civil Procedure Code stood rejected and, therefore, the petitioner is estopped from challenging the order fixing the suit for ex parte hearing at a subsequent stage.

23. At this stage it would be relevant to take note of the observation made by the coordinate bench on February 6, 2020 in CO 272 of 2020 wherein it has been observed that in case the petitioner (i.e., the defendant no. 2) take steps before the learned trial judge by filing an appropriate applications, i.e., the application for taking off the suit from the ex parte board and for allowing the petitioner to file written statement beyond the stipulated time period, the same shall be decided upon a contested hearing. The coordinate bench also noted that there is nothing on record to show that the petitioner ever approached the learned trial judge by filing the application for taking off the suit from ex parte board and for condonation of delay in filing the written statement. Thus, the learned trial judge gave liberty to the petitioner to take appropriate steps before the learned trial judge.

24. It is not in dispute that the petitioner herein, pursuant to such liberty, filed the applications for recalling the order fixing the suit for ex parte hearing and for condonation of delay in filing the written statement. It is not in dispute that after filing of such applications the

suit stood transferred to the Commercial Court on March 15, 2022. Thus, on the date when the suit stood transferred to the commercial court from the normal court, the applications praying for recalling of order for ex parte hearing and for condonation of delay in filing the written statement, were already on record.

25. Now the question that falls for consideration is whether the proviso to subrule (1) of Rule 1 of Order V of the Code of Civil Procedure shall apply to the case on hand.

26. Chapter V of the Commercial Courts Act, 2015 deals with transfer of pending suits.

27. Subsection (3) of Section 15 states that when a suit relating to a commercial dispute of a specified value stands transferred to the Commercial Division or Commercial Court under subsection (1) or subsection (2), the provisions of the Commercial Courts Act, 2015 shall apply to those procedures that were not completed at the time of transfer.

28. Subsection (4) of Section 15 lays down that the Commercial Division or Commercial Court may hold case management hearing in respect of transferred suits in order to prescribe new time lines or issue such further directions as may be necessary for a speedy and efficacious disposal of the suit. The proviso thereto states that the

proviso to subrule (1) of Rule (1) of Order V shall not apply to such transferred suits and the Court may, in its discretion, prescribe a new time period within which the written statement must be filed.

29. Proviso to Subrule (1) of Rule 1 of Order V states that where the defendant fails to file the written statement within the period of 30 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 120 days from the date of service of summons and on expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record.

30. In view of the proviso to Section 15(4) of the Commercial Courts Act, 2015, the mandatory provision of filing the written statement within 120 days from the receipt of summons in a commercial suit will not be applicable to a suit which stood transferred to the Commercial Court. The learned Judge of the Commercial Court also has the discretion to prescribe a new time period within which the written statement must be filed.

31. The Hon'ble Supreme Court in ***Raj Process Equipments and Systems Pvt. Ltd & Ors. (supra)*** held that if the same principle as laid down in *SCG Contracts India Private Limited (supra)*, is applied to a

matter where the suit was instituted before the normal civil court and transferred to the commercial court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in *Salem Advocate Bar Association*, to the proviso to Order 8 Rule 1 of the Civil Procedure Code.

32. The Hon'ble Supreme Court in *Raj Process Equipments and Systems Pvt. Ltd & Ors. (supra)* held that:

“9. There is no dispute about the fact that at the time when the suit was filed and at the time when the order dated 03.07.2018 was passed directing the matter to proceed ex-parte that the matter got transferred to a Commercial Court.

10. It is also an admitted fact that the period of 120 days as stipulated in the second proviso to sub-rule (1) of Rule 1 of Order V CPC and the proviso to Rule 1 of Order VIII expired on 18.06.2018.

11. In other words, the time that was available, if a strict interpretation is given to the aforesaid provisions, was nothing because the time of 120 days had expired even when the matter was pending before the normal Civil Court.

12. Reliance was placed by the High Court on the judgment of this Court in SCG Contracts India Private Limited v. K. S. Chamankar Infrastructure Limited (2019) 12 SCC 210, in support of the contention that the time-line

prescribed under the second proviso to sub-rule (1) of Rule 1 of Order CPC is mandatory and that the appellants have forfeited their right to file written statements.

13. *But we do not agree. The suit that became the subject matter of dispute in SCG Contracts India Private Limited, appears to have been filed before the Commercial Court and not before the normal Civil Court. Insofar as the normal Civil Courts are concerned, it is the proviso to Order VIII Rule 1 CPC which applies. In Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344, this Court held that the proviso to Rule 1 of Order VIII CPC is directory and not mandatory. An exception was carved out in SCG Contracts India Private Limited to this Rule, by this Court insofar as the commercial disputes are concerned by invoking the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, to apply the same principle to a matter where the suit was instituted before the normal Civil Court and transferred to a Commercial Court after the expiry of 120 days would be to give a complete twist to the interpretation given by the 3-member Bench in Salem Advocate Bar Association, to the proviso to Order VIII Rule 1 CPC.*

14. *In fact the decision in SCG Contracts India Private Limited is by a 2-member Bench, which was dealing with the second proviso to sub-rule (1) of Rule 1 of Order V. Therefore, when the decision of the 3-member Bench in Salem Advocate Bar Association was cited before this Court in SCG Contracts India Private Limited, this Court held in paragraph 11 that the earlier law on Order VIII Rule 1 has now been set at naught. Therefore, what is to be applied to*

normal Civil Courts is Order VIII Rule 1 and the interpretation given to the same in Salem Advocate Bar Association.”

33. The coordinate bench in *Sayan Sarker (supra)* also held that in case of transfer of a pending case to the commercial court, after institution of the commercial court, the proviso to Section 15(4) of the Commercial Courts Act would be applicable and the mandatory provisions for filing the written statement within 120 days would not apply.

34. The learned Judge, Commercial Court rejected the application being IA 2 of 2022 which was filed praying for recalling the order dated December 17, 2019 only on the ground that the learned transferor court, by an order dated December 17, 2019, had already fixed the matter on ex parte board against the defendant no. 2 and the same was affirmed by the Hon'ble Court. In view of the aforesaid discussion, this court holds that the learned Civil Judge (Sr. Division), 2nd Court at Alipore exceeded its jurisdiction by fixing the suit for ex parte hearing when the basic ingredients under Order 9 Rule 6 was lacking. The learned Judge of the Commercial Court did not consider such aspect of the matter and for which this court is inclined to interfere with the order rejecting the application praying for taking off the suit from the ex parte board.

35. The learned Judge of the Commercial Court applied the proposition of law laid down in S.C.G. Contracts (India) Private Limited (supra) wherein the Hon'ble Supreme Court forfeited the right of the defendant to file written statement beyond 120 days in a commercial suit and held that filing of an application under Order VII Rule 11 cannot be a ground for the long delay in filing written statement. It is now well settled that the said decision cannot be applied to a suit which has been transferred to the Commercial Court.

36. The other reason for rejecting the application being IA 1 of 2022 filed by the petitioner herein praying for condonation of delay in filing the written statement, is that the order dated December 17, 2019 is still operative. Since this court has already held that the order fixing the suit for ex parte hearing is liable to be set aside, this court is of the considered view that the application being IA 1 of 2022 should be remanded to the learned Judge, Commercial Court for deciding the same afresh.

37. For the reasons as stated above, the impugned order is set aside. The portion of order dated December 17, 2019 thereby fixing the suit for ex parte hearing against the 2nd defendant is set aside. Application IA 2 of 2022 stands allowed. The portion of the order rejecting the IA 1 of 2022 is also set aside and such application stands restored to the file of the learned Judge, Commercial Court at Alipore, South 24 Parganas with a direction upon the learned Judge,

Commercial Court to decide the application being IA 1 of 2022 afresh and dispose of the same in accordance with law as expeditiously as possible without granting any unnecessary adjournment to either of the parties and after giving an opportunity of hearing to the respective parties and by passing a reasoned order without being influenced by the observations made in the order impugned.

38. It is, however, made clear that the plaintiff/opposite party will be at liberty to file an affidavit-in-opposition to the application for condonation of delay in filing the written statement within a week from the date of receipt of a server copy of this order and reply thereto, if any, be filed by the petitioner herein within a week thereafter.

39. With the above observation and direction, CO 2225 of 2025 stands disposed of, without any order as to costs.

40. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)