

**C.O. 2180 of 2024
CAN 2 of 2025
with
C.O. 350 of 2025
M/s Om Tex & Ors.
versus
M/s Om Traders**

Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K.R.Ahmed
Mr. Rudranil Das
Mr. Tapas Chatterjee

...For the defendants/petitioners

Mr. Rupak Ghosh
Mr. Amiya Kumar Dutta
Mr. S.P.Ghosh
Mr. Santanu Talukdar

...For the plaintiff / opposite party

- 1.** Challenging the order no. 10 dated 16th May 2024 and order no. 12 dated 27th August 2024 passed by the Learned Judge, Commercial Court at Rajarhat, North 24 Parganas, the above two revisional applications have been filed.
- 2.** By the first revisional application being C.O. 2180 of 2024 the defendants/petitioners challenge the imposition of costs for acceptance of written statement as also for imposition of costs for adjournment of the hearing of application filed under Order VII rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “Code”). By the second revisional application being C.O. 350 of 2025 the defendants / petitioners challenge the rejection of the application under Order VII rule 10 of the Code. It appears that the above application under Order VII order 10 of the Code was rejected on the ground that the defendants / petitioners had not made payment of costs in terms of order no. 10 dated 16th May, 2024 as also on the ground that there was no stay of the order dated 16th May, 2024 so as to prevent payment of costs.
- 3.** Mr. Mukherjee, learned advocate appearing in support of the aforesaid revisional applications submits that the Learned Judge, at the first instance had exceeded her jurisdiction in imposing costs while accepting the written

statement though the written statement was admittedly filed within 120 days from the date of service of summons. He submits that the Learned Judge further exceeded her jurisdiction in imposing costs while granting adjournment of the application under Order VII rule 10 of the Code, since the adjournment was sought for after the matter was heard.

4. Insofar as order no.12 dated 29th August, 2024 is concerned, Mr. Mukherjee submits that since the defendants/petitioners had preferred a revisional application before this Court challenging the order dated 16th May, 2024, the petitioners had not made payment of costs and were awaiting outcome of the challenge made in the application being CO 2180 of 2024. Having regard to the above time was also sought for to make payment of costs, unfortunately, the Learned Judge without considering the same had rejected the application under Order VII rule 10 of the Code.

5. Mr. Ghosh, learned advocate appearing for the plaintiff/opposite party submits that the defendants/petitioners had been delaying the hearing of the suit and for reasons as aforesaid, the Learned Judge had imposed costs while accepting the written statement. According to him, the Learned Judge had exercised her discretion in imposing costs while accepting the written statement filed beyond the ordinary time prescribed. Having regard thereto, no interference is called for. Insofar as imposition of costs while adjourning the application under Order VII rule 10 of the Code is concerned, he submits that since admittedly the petitioner was delaying hearing of the application under Order VII rule 10 of the Code, costs had been imposed. Such order is also a discretionary order and should not be interfered with.

6. Heard the learned advocates appearing for the respective parties and considered the materials on record. It appears from the order dated 16th May, 2024 that the learned Judge taking note of the fact that the defendants / petitioners ordinarily reside and carry on their business in Tirpur, Tamil Nadu which is a considerable distance from the State of West Bengal and since they could not contact their advocate along with documents in time for preparation and presentation of the written statement within 90 days and having regard thereto, was of the view that the ground shown by the defendants for acceptance of the written statement dated 18th October 2023 is reasonable and sufficient. Notwithstanding the above the learned Judge had imposed costs of Rs.50,000/- for the purpose of compensating the plaintiff for the delay.

7. It is true that a discretion has been exercised by the Learned Judge in imposing costs, while accepting written statement however, such discretion must be exercised judiciously. When the Learned Judge had concluded that the ground shown by the defendants / petitioners for acceptance of the written statement is reasonable and sufficient, in my view no costs could have been imposed, simply because there was delay in filing written statement though, the delay was well explained and was within the outer time limit as provided by the Statute.

8. It, however, appears from the order dated 16th May, 2024 that the Learned Judge has awarded costs as a token compensation for the prejudice caused to the plaintiff / opposite party. I am unable to accede to such view of the Learned Judge. Having regard thereto, the direction for payment of costs of Rs.50,000/- for acceptance of written statement stands set aside.

9. Insofar as, payment of costs of Rs.30,000/- for adjournment of the application under Order VII rule 10 of the Code is concerned, I am of the view that it is well within the discretion of the Learned Judge to impose the same. The defendants / petitioners ought to have complied with the same. Be that as it may, since the defendants / petitioners claim that a revisional application being C.O. 2180 of 2024 had been filed before this Court on 19th June 2024 and since they were awaiting consideration of their challenge in this matter, the defendants / petitioners did not comply with the direction for payment of costs.

10. It appears that the Learned Judge by order no. 12 dated 27th August 2024 had rejected the said application under Order VII rule 10 of the Code on the ground of nonpayment of costs. Records reveal that revisional application being C.O. 2180 of 2024 was taken up for consideration on 19th September 2024 and a Coordinate Bench of this Court while admitting the revisional application, had stayed all further proceedings of Money Suit (Commercial) No. 82 of 2024 pending before the Learned Judge, Commercial Court at Rajarhat, North 24 Parganas. Though, the defendants / petitioners cannot be excused for delaying the hearing of the suit by keeping the application under Order VII rule 10 of the Code pending, however, I am of the view that for the ends of justice, the defendants / petitioners should be given one more opportunity to have the application under Order VII rule 10 of the Code to be heard out especially, when the same seeks to question the jurisdiction of the learned Court to entertain the same, though, subject to compliance of the order dated 16th May, 2024 insofar as payment of costs of Rs.30,000/- for granting adjournment, is concerned.

- 11.** Having regard thereto, the order no. 10 dated 16th May 2024 stands modified / varied to the aforesaid extent and the order no. 12 dated 27th August 2024 stands set aside.
- 12.** Since, the parties would submit that the next date for hearing before the Learned Trial Court is fixed on 19th February 2025, the learned Judge is directed to take up the hearing of the application under Order VII rule 10 of the Code on the said date so fixed and hear out and dispose of the same without granting unnecessary adjournments to either of the parties.
- 13.** With the above observations and directions, the revisional applications being C.O. 2180 of 2024 along with its connected application being CAN 2 of 2025 and C.O. 350 of 2025 are accordingly disposed of.
- 14.** All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)