

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

**APOT/276/2025
IA NO: GA/1/2025**

**FAIRLAND DEVELOPMENT PRIVATE LIMITED
VS
BITHAL DAS KOTHARI, SECRETARY WEST
BENGAL HOSIERY ASSOCIATION AND ANR.**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Dwaipayan Basu Mallick, Adv. (VC)
Mr. Sounavo Basu, Adv.
Mr. Akash Bara, Adv.

For the Respondents : Mr. Sourav Sengupta, Adv.
Mr. Debdeep Sinha, Adv.
Mr. D. Dwivedi, Adv.
Mr. Aman Baid, Adv.
Mr. Bhaskar Dwivedi, Adv.

Heard On : 18.12.2025

Delivered On : 18.12.2025

MD. SHABBAR RASHIDI, J.:-

1. This appeal is directed against the order dated August 21, 2025. By the impugned order, GA 4 of 2025 in CS 17 of 2010 was allowed by the learned Single Judge, extending the time to file written statement subject to payment of certain cost.

2. It is submitted on behalf of the learned Advocate for the appellant that learned Trial Judge committed error in allowing the application, seeking extension of time to file written statement in the original title suit. Learned Advocate for the appellant also submits that there was no explanation with regard to the delay in submitting the written statement in the original suit in spite of that prayer for extension of time was granted.

3. On the other hand, learned Advocate for the respondent submits that the provisions under Order VIII Rule 1 of the Code of Civil Procedure, 1908 are directory in nature. Therefore, the period of 90 days prescribed in such provisions may be extended at the discretion of the learned Court.

4. Learned Advocate for the respondent further submits that the learned Trial Court has exercised its discretion which cannot be questioned in an appeal. Learned Advocate for the respondent also submits that there are authorities which ordains that prayers in respect of extension of time for filing written statement should be looked into leniently. In support of his contention, learned Advocate for the respondent relied upon in the case of *Salem Advocate Bar Association. T. N. Vs. Union of India* reported in (2005) 6 Supreme Court Cases 344 and *Zolba Vs. Keshao and Others* reported in (2008) 11 SCC 769.

5. The civil suit being CS No. 17 of 2010 was filed on February 2, 2010. The plaint was presented on February 3, 2010 and it was admitted. The writ of summons was issued on February 10, 2010 which was received by the defendant/respondent on February 18, 2010.

6. From the materials on record, it transpires that time to file written statement expired on March 11, 2010. The case was made out by the

defendant that the defendant consulted his Advocate and considerable time was taken in preparing the written statement. The defendant entered appearance in the suit on February 20, 2010. Thereafter, same extension of time for filing the written statement was also sought which was allowed by the learned Trial Court.

7. Another case has been made out by the respondent that since the learned Advocate engaged by him expired in 2011, the defendant/respondent was prevented from filing the written statement within time. It is further contended that this suit was dismissed for default on November 17, 2023 and subsequently, was restored on May 7, 2025.

8. From the materials on record, it transpires that the suit was filed in 2010 and was restored in 2025. There is no explanation on the part of the respondent/defendant as to the steps taken for filing his written statement in the original suit since February 20, 2010 when the defendant/respondent entered appearance in the suit, till the suit was dismissed for default in November, 2023. The only ground that has been canvassed for not filing the written statement within the time or the extended period of time is that the conducting Advocate for the respondent/defendant expired in 2011. Apparently, there is no explanation as to what steps were taken by the respondent after the alleged death of the learned Advocate in the year 2011.

9. In the order impugned, the learned Single Judge formulated a point for consideration whether the defendant was able to make out exceptional circumstances for not filing the written statement in time. Considering such point, it transpires from the impugned order that the learned Single Judge came to a conclusive finding that conduct of the

defendant from the very inception did not appear to him to be *mala fide*, although, there was unexplained delay of several years and negligence in filing the written statement was apparent.

10. The learned Judge also noted in the impugned order that during the self-same period, the defendant had been pursuing a case filed on his behalf diligently. If that be so, the explanation given by the defendant to the effect that, due to death of learned conducting Advocate, he was prevented from filing the written statement within the stipulated time or the extended time, does not stand.

11. In the case of *Salem Advocate Bar Association* (supra), it was laid down by the Hon'ble Supreme Court with regard to the use of word "shall" under the provisions of Order VIII Rule 1 of the Code of Civil Procedure to the following:

"20. The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the

present context, the strict interpretation would defeat justice.”

12. In *Zolba* (supra), the Hon’ble Supreme Court also noted the decision rendered in *Salem Advocate Bar Association* (supra) which states as follows:

“15. Therefore, following the principles laid down in the decision, as noted hereinabove, it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.”

13. In the facts of the present case, we are of the opinion that there has been an inordinate delay in filing the written statement. The suit was filed in the year 2010 and written statement was not filed till this suit was dismissed for default on 17th November, 2023. The suit was restored to its original file in 2025. Even thereafter, till date, no written statement has been filed on behalf of the respondent.

14. In view of the ratio laid down in *Zolba* (supra), we find that no exceptional circumstance has been made out or put forward by the respondent/defendant which prevented him from filing the written statement within the prescribed time period or the extended period of time.

15. The defendant has failed to explain the delay between 2011, when the Advocate-on-record expired till the date of application for extension of time to file written statement. The learned Single Judge has held that, the defendant is guilty of negligence and that, the delay remains unexplained. After having returned a finding that the defendant was guilty of unexplained delay and negligence, we do not think that, the learned Judge has exercised discretion in extending the time to file written statement, particularly in view of the ratio of *Zolba* (supra).

16. Accordingly, we set aside the impugned order. The appeal is allowed.

17. APOT/276/2025 along with connected application, if any, are disposed of.

(MD. SHABBAR RASHIDI, J.)

18. I agree.

(DEBANGSU BASAK, J.)