



2025:DHC:7145-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA(COMM) 7/2025 & CM APPL. 933/2025**

M/S BHAGIRATI ENTERPRISES

AND ANR

.....Appellants

Through: Mr. Gaurav Dubey, Adv.

versus

M/S KIRTI ENTERPRISES

.....Respondent

Through: Mr. Rajesh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 20.08.2025

C.HARI SHANKAR, J.

1. This Regular First Appeal assails judgment dated 9 August 2024 passed by the learned District Judge (Commercial Court)¹ North District, Rohini Court, Delhi in CS(Comm) 537/2023.

2. The appellants were the defendants in the said suit and the respondent was the plaintiff.

3. Summons in the suit were issued by the learned Commercial Court on 20 September 2023.

4. Admittedly, no written statement was filed within the period of

¹“ learned Commercial Court” hereinafter



30 days from the receipt of the summons, stipulated in Order VIII Rule 1² of the Code of Civil Procedure, 1908³ as amended by the Commercial Courts Act, 2015.

5. On 30 January 2024, the learned Commercial Court proceeded to pass the following order:

“CS (COMM.) 537/23
KIRTI ENTERPRISES VS. BHAGIRATI ENTERPRISES &
ORS.

30.01.2024

Present: Sh. Rahul Shokeen, Ld. Counsel for Plaintiff.
None for Defendant.

The Defendants have been duly served 06.12.2023 but defendants have not filed WS within the period of 30 days prescribed under the Commercial Courts Act, *No WS has been filed even today. No application seeking exemption of time moved on behalf of the Defendants. As such the right of the defendants to file WS is closed.*

In so far as 120 days are yet to elapse, defendants are at liberty to move appropriate application seeking condonation of delay in filing the WS within this window.

In view of the pleadings, following notional issues are framed:-

(1) Whether the Plaintiff is entitled to Decree in the sum of Rs. 13,33,733/- as prayed for?OPP

(2) Whether the Plaintiff is entitled to any interest and if so, at what rate, at what amount and for what period?OPP

² 1. **Written statement.** – The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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.

³ “CPC” hereinafter



(3) Relief.

No other issue arise or is pressed for.

Put up for ex-parte PE on 09.05.2024.”

(Emphasis supplied)

6. We have our doubts as to whether the learned Commercial Court could have passed the aforesaid order on 30 January 2024, closing the appellant’s right to file written statement, when the maximum period of 120 days as per Order VIII Rule 1 of CPC read with the proviso thereto had yet to elapse. Nonetheless, the order dated 30 January 2024 is not under challenge before us. Ergo, we refrain from stating anything further in that regard.

7. This aspect, however, pales into insignificance as, on 1 August 2024, the appellant filed a written statement along with an application under Order VIII Rule 1 and Rule 1A of the CPC, as amended by the Commercial Courts Act for condonation of delay.

8. We deem it appropriate to reproduce paras 3 and 4 of the said application, thus:

“3. That the Defendants were required to file the written statement within 30 days from the receipt of summons. However, advocate of the case Advocate Mr. Dinesh Kumar was supposed to file reply in Kirti Enterprises case in Rohini Court on the date in January for which he got the written statement alongwith application signed and attested *but did not filed the written statement and also did not appear on the hearing on 30.01.2024* because of which the defence was struck down and when the defendant asked him about the date of hearing he said everything is under control and he has appeared and done all the needful.

4. That later on he even failed to appear on the next date



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09.05.2024 on which date the evidence of plaintiff was recorded and closed. Now this matter is fixed for final arguments on 09.08.2024.”

(Emphasis supplied)

9. Thus, in para 3 of the aforesaid application filed by the appellant on 1 August 2024, there is a candid admission, on oath, that no written statement was filed on 30 January 2024.

10. Apparently, as per the record, the written statement was filed by the appellant was filed, for the first time, with the aforesaid application on 1 August 2024.

11. In view of the maximum period of 120 days available for filing a written statement as per Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act read with the proviso thereto, the written statement filed on 1 August 2024 could, in any case, not have been taken on record.

12. The learned Commercial Court, therefore, proceeded to decree the suit in favour of the respondent and against the appellants by judgment dated 9 August 2024.

13. Aggrieved thereby, the appellants have instituted the present appeal.

14. On the first date of hearing of the present appeal, the following order came to be passed by a coordinate Division Bench of this Court:

“RFA(COMM) 7/2025 & CM APPL. 933/2025



5. This appeal has been filed challenging the Judgment and Decree dated 09.08.2024 passed by the learned District Judge (Commercial Court), North Distt., Rohini Courts, Delhi decreeing the Suit filed by the respondent herein and directing the appellant to pay a sum of Rs.10,98,500/- along with *pendente lite* and future interest @9% per annum to the respondent.

6. The Impugned Order records that in spite of service of summons, the appellants, who were the defendants in the Suit, failed to appear and also did not file their Written Statement within the prescribed period because of which their defence was struck off *vide* Order dated 30.01.2024.

7. The learned counsel for the appellants submits that on 30.01.2024 itself, the appellants had filed their Written Statement along with an application under Order VIII Rules 1 and 1A of the Code of Civil Procedure, 1908 seeking extension of time for filing the Written Statement. He submits that the Order dated 30.01.2024 passed by the learned Trial Court, itself records that the maximum period by which the delay in filing of the Written Statement can be condoned had not yet lapsed. He submits that the learned Trial Court, however, failed to consider the said application, which still remains pending on the record of the Trial Court.

8. Issue notice to the respondents, to be served through all modes, including through the counsel who appeared for the respondents before the learned Trial Court, returnable on 24th February, 2025.

9. Let the Trial Court record also be requisitioned for the next date of hearing.”

15. Mr. Dubey, learned Counsel for the appellants, places reliance on a document filed with the present appeal as Annexure P-2C, which bears a stamp towards the upper right corner of the Index with a comment “put up on date 30/01/2024”. It is apparent by this document on which Mr. Dubey seeks to place reliance to support his contention that, in fact, a written statement was filed by the appellant on 30 January 2024, and that the learned Commercial Court, therefore, erred in overlooking this fact.



16. Mr. Rajesh Kumar, learned Counsel for the respondent, disputes this assertion and questions the validity of the aforementioned document annexed as Annexure P-2C to the appeal.

17. We do not think it is necessary for us to enter into this arena, for two reasons.

18. The first is that there is no challenge to the order dated 30 January 2024, which clearly notes that no written statement was filed on the said date. As Mr. Rajesh Kumar points out, the suit was listed before the learned Commercial Court even thereafter, and it was never sought to be urged by the appellant that a written statement had been filed on 30 January 2024.

19. This contention has been raised for the first time before this Court. In the absence of a challenge to the order dated 30 January 2024, such a contention is obviously not available to the appellants.

20. Secondly, the appellants cannot, in an appeal, seek to urge a contention contrary to that stated by the appellants on oath before the learned Commercial Court. The application under Order VIII Rule 1 of CPC, filed by the appellants on 1 August 2024, of which para 3 stands reproduced *supra*, clearly acknowledges that no written statement was filed on 30 January 2024. That application has never been amended, nor has this assertion been corrected at any point of time. As such, the appellants are bound by the assertion contained in para 3 of the aforesaid application, to the effect that no written statement was filed on 30 January 2024.



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21. In view of the fact that a maximum period of 120 days from the date of service of summons is available to a defendant to file written statement in terms of Order VIII Rule 1 of the CPC read with the proviso thereto, as amended by the Commercial Courts Act, and no written statement was, in fact, filed within the aforesaid period of 120 days, we find no error in the approach of the learned Commercial Court in proceeding on the premise that no written statement had been filed by the appellant.

22. The impression that was sought to be conveyed to this Court on 9 January 2025 was obviously misleading. This, by itself, would suffice to deny relief to the appellant.

23. We deprecate the filing of the present appeal but refrain, reluctantly, from awarding costs.

24. The appeal is accordingly dismissed.

C.HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 20, 2025/ng