

14. 12.05.2025
Court No.06.
(Pritam)

CO 1070 of 2026.

Monalisa Nayak & Ors.
-Vs.-
Qualitas AE Services Private Limited.

Mr. Kishore Mukherjee,
Mr. Ahitagni Dey

.....for the petitioners.

Mr. Prasanta Kumar Dutt,
Mr. Susanta Kumar Dutt,
Mr. Sourjya Roy

.....for the respondent.

1. This application under Article 227 of the Constitution of India is directed against an order dated June 10, 2025 passed by the learned Judge, Commercial Court at Alipore, in Title Suit No. 16 of 2022 renumbered as T.S. (Com) 40 of 2022, whereby the petitioner's prayer to file written statement to the amended plaint has been rejected by the learned Commercial Court.
2. T.S. (Com) No.40 of 2022 has been instituted by the opposite party against the petitioners praying, *inter alia*, for a decree for declaration, injunction and damages.
3. In the said suit, though the petitioners (i.e. defendant nos.2 to 5 in the suit) entered appearance upon service of summons yet they could not file their written statements within the maximum available statutory period of 120 days.

4. Subsequently, the plaint was amended by the plaintiff/opposite party and an amended plaint was filed on November 16, 2024.
5. Upon the amended plaint being filed, the petitioners (i.e. defendant nos.2 to 5) were given opportunity to file additional written statement. The petitioners, however, filed a full-fledged written statement traversing the entirety of the plaint. The learned Trial Court has rejected, such written statement. Hence, the revisional application.
6. Mr. Mukehrjee, learned advocate appearing for the petitioners submits that the learned Trial Court has committed a serious error in rejecting the petitioner's prayer for filing written statement inasmuch as upon the amended plaint being filed, a fresh right to file written statement accrued to the defendants and as such the written statement could not have been rejected, all the more so since the same had been filed within the extendable period of 120 days with appropriate explanation.
7. He has handed up to Court a copy of the application filed for acceptance of written statement and demonstrated that the learned Trial Court has also referred to the same. He submits that the written statement could not be filed within 120 days from the date of filing of the amended plaint due to want of necessary documents.

8. Mr. Roy, learned advocate appearing for the opposite party submits that since the defendants had not filed any written statement at all to the plaint that was originally filed, therefore upon an amendment being effected thereto, the defendants' right to file written statement should be restricted only to the portions, which have been freshly introduced. In support of his submissions, he relies on a judgment of the Hon'ble Division Bench of this Court in the case of **A.K. Ghosh and Company & Ors. vs. Biman Bose & Ors.** reported at **2025 SCC OnLine Cal 1781**.
9. Heard the learned advocates appearing for the respective parties and having considered the material on record.
10. Although there is a strict timeline for filing written statement to the originally filed plaint there is none for a written statement filed in response to an amended plaint and it is for the Court to fix specific time frame therefor which can be extended if the Court is satisfied that sufficient cause has been made out. Such a situation would not be akin to a situation under Order 8 Rule 1 of the Code (as applicable to Commercial suits). At best Order 8 Rule 9 of the Code can be said to be applicable but the timeline fixed in accordance thereto is extendable upon satisfaction of the Court.

11. In any case the petitioners have undisputedly filed their written statement within 120 days from the filing of the amended plaint and they have shown reasons justifying the delay in filing the same. The learned Trial Court has not disbelieved the reasons but has refused to accept the written statement since the petitioners had not filed any written statement at all. Law however permits the defendants to file written statement in response to fresh pleas by way of amendment and such right cannot be taken away.
12. However, such written statement, as rightly contended by Mr. Roy, cannot be permitted to be one dealing with the entirety of the plaint. The petitioners may be permitted to file written statement only to the extent, the originally filed plaint has been amended, i.e., their written statement should be restricted to dealing with the paragraphs introduced upon amendment of plaint (i.e. as mentioned in the Schedule of the application for amendment of plaint under Order VI Rule 17 of Code of Civil Procedure, 1908 that had been allowed). The written statement filed by the petitioner only to that extent may be permitted by the learned Commercial Court and no further.
13. The petitioners shall be at liberty to file appropriate application before the learned Commercial Court and file written statement confined and restricted only to

the amended portions of the plaint on the next date before the learned Trial Court. The earlier written statement that was filed by the petitioner earlier which has not been accepted by the learned Trial Court shall be treated as redundant.

14. This Court has been informed that the next date in the suit is June 06, 2026. It is made clear that if the written statement as aforesaid is not filed on that date, the opportunity to file written statement shall stand closed and the suit shall proceed without the written statement of the petitioners in accordance with law.
15. With the aforesaid observations, CO 1070 of 2026 stands disposed of.
16. Since no affidavits have been called for, the allegations made in the revisional application shall be deemed not to have been admitted by the opposite party.
17. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)