

OD-3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/77/2026
With
CS/121/2025
IA No. GA/1/2026

MOHAMMAD ABBAS RAHIM
-VS-
AFFAKUZZAMAN KHAN AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE MD. SHABBAR RASHIDI

Date: May 7, 2026.

Appearance:
Mr. Rauf Rahim, Sr. Adv.
Ms. Dakshayani Basu, Adv.
...for the appellant

Mr. Sujit Banerjee, Adv.
...for the respondent no.1

Mr. Debanik Banerjee, Adv.
Mr. Steven S. Biswas, Adv.
...for the respondent nos. 2 & 3

The Court: Appeal is at the behest of the defendant no.1 directed against the order dated April 7, 2026 in CS/121/2025.

By the impugned order, learned Single Judge, extended the time to file written statement by the defendant no.1 till May 8, 2026 subject to payment of costs of 5000 GMs.

Learned Senior Advocate appearing for the appellant submits that, the delay in filing the written statement cannot be attributed to the appellant

solely. He points out that, the plaint was filed on October 24, 2025. There were certain defects which the plaintiff was required to correct. By an order dated January 28, 2026, the plaintiff was allowed to remove such defects. Defects were removed prior to February 6, 2026. Writ of summons of the suit was served upon the defendant no.1 on February 25, 2026. Defendant no.1 filed *Vakalatnama* on March 5, 2026. An interim order was passed on March 11, 2026.

Learned Senior Advocate appearing for the appellant submits that the appellant is of advanced age and residing alone in Kolkata. It is difficult for the appellant due to old age to file written statement within the time stipulated by the Code of Civil Procedure, 1908. He submits that quantum of cost imposed is harsh and punitive. Moreover, given the age of the defendant no.1 and medical condition, time for filing written statement may be extended.

Plaintiff is represented.

We find from the records that, the learned Single Judge was pleased to extend the time to file written statement by the appellant till May 8, 2026 subject to payment of cost of 5000 GMs, out of which 2500 GMs was directed to be paid to the State Legal Services Authority.

There are extenuating circumstances which exist in favour of the appellant. Writ of summons of the suit was served only on February 25, 2026 in respect of a suit filed on October 24, 2025 after the Court required the plaintiff to cure the defects and defects were cured prior to February 6, 2026.

Records made available to Court suggest that, the appellant is suffering from medical condition. Appellant is also of advanced age. The exercise of discretion by the learned Single Judge, *per se*, cannot be termed to be perverse. However, the quantum of cost imposed requires consideration.

In view of the extenuating circumstances existing, it would be appropriate to reduce the costs imposed. Moreover, by the same reasoning, time to file written statement should be extended in order to allow the appellant reasonable time to comply.

Consequently, upon payment of costs assessed at Rs.25,000/- to the West Bengal State Legal Services Authority, Kolkata by the appellant, time to file written statement by the appellant is extended till May 18, 2026.

APOT/77/2026 along with pending application is disposed of, without any order as to costs.

(DEBANGSU BASAK, J.)

(MD. SHABBAR RASHIDI, J.)