

**IN THE HIGH COURT AT CALCUTTA  
ORDINARY ORIGINAL JURISDICTION  
ORIGINAL SIDE  
(Commercial Division)**

BEFORE:

**The Hon'ble Justice Ravi Krishan Kapur**

**IA NO. GA/2/2022  
In CS/150/2022**

IN THE MATTER OF :

HINDUSTAN UNILEVER LIMITED  
Vs.  
EMAMI LIMITED

For the petitioner : Mr. S. N. Mukherjee, Senior Advocate  
Mr. Arunabha Deb, Advocate  
Mr. Soumya Roy Chowdhury, Advocate  
Mr. Deepan Kr. Sarkar, Advocate

For the respondent : Mr. Debnath Ghosh, Advocate  
Mr. Mini Agarwal, Advocate

Reserved on : 18.01.2023

Judgment on : 07.02.2023

**Ravi Krishan Kapur, J.**

1. This is an application for taking on record the written statement.
2. The suit is for disparagement and has been instituted before the Commercial Division of this Court. It is alleged that the writ of summons (alongwith the plaint) was served at the corporate office of the defendant on 29 June 2022. Thereafter, on 7 July 2022 the writ of summons (alongwith the plaint) was served at the registered office of the defendant. It is further contended that the writ of summons does not conform with the mandate of Order V Rule I of

the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015. The endorsement on the writ of summons provides that *“in case the defendant fails to file the written statement within a period of 30 days, the defendant 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 may deem to be fit and proper but which shall not be later than 120 days from the date of service of the Writ of Summons”*. Thus, it is alleged that the time to file the written statement does not begin unless the summons as contemplated under Order V Rule I of the CPC is served on the defendant. It is further alleged that service at the corporate office of the defendant is not good service since service must be effected only at the registered office of the company. The written statement was affirmed on 4 November 2022 and served on the plaintiff on that date itself. However, since the Master, Original Side, was absent on 7 November 2022 and 8 November, 2022 respectively, the summons could only be signed on 9 November 2022. In any event, since the writ of summons was delivered at the registered office only on 7 July 2022, the 120 day period should be counted from that date and not from any other date. Thus, there is no delay in the filing of the written statement and the same be taken on record. The prayers for revocation of leave under Clause 12 of the

Letters Patent, 1865 and for dismissal of the suit have not been urged at the time of hearing of this application.

3. On behalf of the plaintiff it is contended that, the writ of summons had been duly served at the corporate office of the defendant on 29 June, 2022. Thereafter, on 7 July 2022 the writ of summons was served at the registered office of the defendant. The period of 120 days expired on 27 October 2022 and thereafter the defendant lost the right to file the written statement. It is also contended that the date of affirmation of the written statement is irrelevant. Moreover, the summons to this application had been taken out only on 9 November, 2022 which is also beyond the stipulated period of 120 days from the date of receipt of the writ of the summons both at the registered office and the corporate office of the defendant. The fact that a copy of the written statement has been served by the defendant alongwith this application on 9 November, 2022 is immaterial since admittedly no written statement has been filed within the stipulated mandatory period.
4. Order V Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 (CPC) has been substituted and reads as follows:

*2. Provided further 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.*

The substituted proviso of Order VIII Rule 1 of the CPC is as follows:

*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 and twenty days from the date of service of summons and on expiry of one hundred and 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.*

Order VIII Rule 10 of the CPC is as follows:

10. *Procedure when party fails to present written statement called for by Court.—Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up: [Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.]*

5. On a combined reading of the aforesaid provisions it is clear that, the legislative intent is now to take away any discretion from Court in extending the time to file the written statement beyond the period of 120 days from service of the writ of summons. The Rule provides that “*on expiry of 120 days from the date of service of the summons, the defendant shall forfeit the right to file the written statement and the Court should not allow the written statement to be taken on record*”.

6. In *SCG Contracts India Pvt Ltd. vs K.S Chamankar Infrastructure Pvt Ltd & Ors. (2019) 12 SCC 210*, it has been held as follows:

*“A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, a grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.”*

7. This suit was instituted on 13 June 2022. On 29 June 2022 the writ of summons was served on the defendant at its corporate office. On 7 July 2022 the writ of summons was also served at the registered office of the defendant company. On 28 October 2022 the defendant lost the right to file the written statement since the period of 120 days from 29 June 2022 came to an end on 27 October 2022. On November 4, 2022 the 120 day period from 7 July 2022 expired. Admittedly, no written statement had been filed even as on 4 November, 2022. Nor had any application been filed seeking extension of time to take the written statement on record. The service of the written statement by e-mail on the Advocate of the defendant is insufficient. The date of affirmation of the written statement is also irrelevant. The obligation of the defendant is to file the written statement in accordance with law within the 120 day period. This has admittedly not been done.

8. There is no merit in the contention that service of the summons at the corporate office of the defendant is not good service. In this case, the writ of summons was served at the corporate office of the defendant. This office is situated within the jurisdiction of the Court. Significantly, in proceedings pending before this Court, the defendant has itself admitted that it is carrying on business from this office and has been using the said address for filing of proceedings before this Court. I also do not find any merit in the contention that Mr. B. K. Das was not authorised to accept any service on behalf of the defendant. In any event, such allegation is bereft of any particulars. The defendant has also disclosed documents received from the Office of the Sheriff at Calcutta at the aforesaid address, which is the corporate office of the defendant. This demonstrates receipt of the writ of summons. The reliance placed on the decision reported in *Harendra Nath Ghosal V. Superfoam Private Limited 1991 SCC Online Cal 72* is misplaced. In fact, it has been held that the modes of service mentioned in the section 148 of the Companies Act 1956 are not the only modes of service of a document on the company. (*Jute and Gunny Brokers Limited and Others, etc. v. Union of India in AIR 1961 SC 1214 at para 17 and 18, Dawsons Bank Limited, Pyapon by Managing Director, Lawrence Dawson v. Municipal Committee, Kyaiklat AIR 1941 Rangoon 339*). I also find that service at the corporate office of the company is valid and good service when the summons

alongwith the plaint have been duly received at such office. Order XXIX Rule 2 of the Code of Civil Procedure, 1908 does not limit the service of the summons to the registered office of the company alone. There is also nothing in section 20 of the Companies Act, 2013 which limits the mode of service. The provision as the words indicate is only an enabling provision as to the manner and mode whereby service is effected on a company or a corporation. (*Parasrampuriah Synthetics Limited v. Shankar Prasad* (2003) 69 DRT 53). In any event, this argument of the defendant is academic since the defendant has admittedly failed to file the Written Statement even within the period of 120 days from the date of receipt of summons even at the registered office of the company. The summons to this application was taken out only on November 9, 2022. Thus, the right of the defendant to file the Written Statement stood forfeited.

9. I also find no merit in the contention that the writ of summons issued by this Court is a non-conforming writ of summons in case of commercial suits. The decision cited by the defendant *Atlanta Limited v. Metso India Private Limited*, AIR 2021 Bom 300 is also distinguishable. In the said decision admittedly, the writ of summons has been received without a copy of the plaint. It is in that background that the decision is to be read and interpreted. On the other hand, the defendant in this case had duly received the writ of summons with a copy of the plaint at both its offices

respectively and is deemed to have knowledge of the requirement of filing the written statement within the mandatory time period.

10. In the above circumstances, it is clear that the defendant has been unable to file the written statement within the 120 day period. The Code of Civil Procedure, 1908 prescribes the manner in which the written statement is to be filed. It is not only merely preparing and service of the written statement on the plaintiff which is necessary. The defendant is now obliged to file the written statement in accordance with law within the 120 day period after service of the writ of summons. The mandate of the amended provision is clear. [*Desh Raj vs. Bal Kishan (2020) 2 SCC 708 at para 12*].
11. The routine, casual and cavalier approach in such matters is no longer permissible. There is no discretion with the Court to extend the time to file the written statement beyond the prescribed 120 day period. The legislative objective must be adhered to and complied with so that commercial disputes can be resolved in a time bound manner. The system has to cultivate a culture of respecting mandatory timelines. Accordingly, the prayer for taking the written statement on record is rejected.
12. GA 2 of 2022 stands dismissed. However, there shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)