

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

IA NO. GA-COM/3/2025

In CS-COM/749/2024

MSC MEDITERRANEAN SHIPPING COMPANY S. A. AND ANR.

VS

NTC INDUSTRIES LIMITED

For plaintiffs:

Mr. Krishnaraj Thaker, Sr. Adv.

Ms. Sneha Singhania, Adv.

Ms. Sreenita Thaker, Adv.

For defendant:

Mr. Shuvasish Sengupta, Adv.

Mr. Balarko Sen, Adv.

Reserved on : 18.11.2025

Judgment on: 25.11.2025

ANIRUDDHA ROY, J.:

In Re: IA NO. GA-COM/3/2025

Facts:

1. The master summons has been taken out by the defendant, inter alia, praying for direction upon the concerned department to accept the written statement by extending the time. The plaintiffs have filed the suit in the commercial division for recovery of alleged demurrage

charges allegedly for a sum of Rs.2,03,42,338.50/- against the defendant along with other consequential reliefs.

2. From the statements made in the supporting affidavit it appears that the defendant has contended that the writ of summons along with the plaint appended thereto was received by the defendant on **November 22, 2024** wherefrom it appears to the defendant that the plaint was presented on **August 13, 2024**.

3. It was specified in the writ of summons that within 120 days from the date of service of writ of summons, the defendant was to file its written statement. The defendant's case in its supporting affidavit is that the writ of summons has been received by it on **November 22, 2024** and the written statement was ultimately affirmed within 120 days therefrom, as provided under the amended provision of **Rule 1 (a) of Order VIII of the Code of Civil Procedure, 1908 (for short CPC)**.

4. The grounds shown for not filing the written statement within the mandated 30 days under the amended provisions of Rule 1 to Order VIII of CPC are mentioned in the supporting affidavit and on the basis thereof, the instant application has been filed.

5. The parties have filed and exchanged their respective affidavits on the application.

Submissions:

6. Mr. Shuvasish Sengupta, learned counsel appearing for the defendant during his submissions referring to the averments made in sub-paragraph (f) to paragraph 3 of the affidavit-in-reply filed by the defendant submits that the plaintiffs contend that the report of the

office of the Deputy Sheriff dated February 10, 2025 annexed to the affidavit of the plaintiffs shows that a postal service of writ of summons through speed post with acknowledgement due (A/D) had been effected but the report does not include any document which would suggest that the concerned department of the Deputy Sheriff had served the writ of summons by post and the same was duly received by the defendant on November 14, 2024. However, further the second part of the said report did not indicate that whether any postal acknowledgment receipt has been received by the office of the Deputy Sheriff. Learned counsel Mr. Shuvasish Sengupta submits that neither the directors nor the principal officer or any authorized person of the defendant had been served with the writ of summons along with the plaint and other documents on November 14, 2024.

7. Mr. Shuvasish Sengupta, learned counsel for the defendant then refers to the provisions laid down under **Order XXIX from CPC**, which deals with suit by or against corporation. Referring to **sub-Rule (2) to Order XXIX of CPC**, Mr. Shuvasish Sengupta submits that the law provides a specific provision that subject to any statutory provision regulating service of process, where suit is against a corporation/company, summons may be served on the secretary or any director, or other principal officer of the corporation/company or by leaving it or sending it by post addressed to the corporation/company at its registered office, or if there is no registered office then at the place where the corporation/company carries on business. He submits that on November 14, 2024, from the report of the office of the Deputy

Sheriff, it appears that even if the writ of summons was served through post at the registered office of the company but the same was not delivered to or accepted by the secretary or any director or any other principal officer of the company and, therefore, there was no valid service of writ of summons on the company.

8. Relying upon the report of the office of the Deputy Sheriff annexure-A at page 7 of the affidavit-in-opposition filed by the plaintiffs, Mr. Shuvasish Sengupta further submits that the report shows hand service of the writ of summons through the office of the learned District Court, Barasat was effected on the defendant on November 22, 2024 and the report further shows that the same was served upon a principal officer of the company. Therefore, when the writ of summon was served on November 22, 2024 as would be evident from the Deputy Sheriff's report on the principal officer of the company, the said date being **November, 22, 2024** should be taken and accepted as the valid service of writ of summons upon the company and in that event the application has been filed and the written statement was affirmed within the mandated 120 days from the service of writ of summons as provided under amended provision of Rule 1 to Order VIII of CPC.

9. Mr. Shuvasish Sengupta, learned counsel submits that when the writ of summons has been served upon the principal officer of the company, this is the valid service of writ of summons which was served on the principal officer of the company on November 22, 2024 in strict compliance of the provision laid down under Order XXIX of CPC and the stipulated mandated time frame of 30 days and also 120 days under the

amended provisions of Order VIII Rule 1 of CPC shall reckon from that date. In support, he has relied upon the following decisions :

(i) In the matter of: M/s Shalimar Rope Works Ltd. vs. M/s. Abdul Hussain H. M. Hasanbhai Rassiwalla and Others reported at (1980) 3 SCC 595;

(ii) In the matter of: S.V. Enterprises vs. Welkin Auto Pvt. Ltd. reported at 2020 SCC OnLine Cal 646;

(iii) In the matter of: Pravinchandra s/o Dhanjibhaikotak vs. Murli Agro Products Ltd. reported at 2005 (4) Mh. L. J. 156.

10. In the light of the above, referring to the explanations and grounds mentioned in the supporting affidavit, Mr. Shuvasish Sengupta, learned counsel for the defendant submits that the written statement has been affirmed and the application has been filed for extension of time beyond the mandated 30 days but within the mandated 120 days and upon accepting the causes shown in the supporting affidavit, the defendant should be permitted to file its written statement.

11. Learned Senior Counsel Mr. Krishnaraj Thaker appearing for the plaintiffs, while opposing the instant application submits that the plaintiffs have obtained a service report from the office of the Deputy Sheriff, annexure-A at page 7 to the affidavit-in-opposition. The report **dated February 10, 2025** reveals that the writ of summons along with a copy of the plaint was served on the defendant through speed post on **November 14, 2025** and by hand on **November 22, 2024**. As the writ of summons was received by the defendant on **November 14, 2024**, the mandated time limit of 30 days under Order VIII Rule 1 of CPC to file

written statement expired on **December 13, 2024** and the extendable mandated time limit of 120 days expired on **March 13, 2025**. The defendant's Advocate-on-record has entered appearance and filed Vokatatnama on **March 20, 2025**. The instant application has filed on **March 20, 2025**, which is beyond the mandated 120 days.

12. Mr. Krishnaraj Thaker learned Senior Counsel then submits that the defendant has suppressed that it had received the writ of summons by Post on **November 14, 2024**. The defendant while applying before this Court praying for extension of time for filing written statement has not disclosed the said fact deliberately and willfully. This is a willful suppression of fact on the part of the defendant.

13. Mr. Krishnaraj Thaker learned Senior Counsel then refers to the provisions laid down in Rule 2 to Order XXIX of CPC and submits that the language of the rule clearly shows that the writ of summons may be served on the secretary or any director or other principal officer of the corporation/ company or by leaving it or sending it by post addressed to the corporation at the registered office. Reading of the provisions makes it clear that, the provisions are disjunctive. He submits that either the writ of summons may be served on the designated persons as provided under sub-Rule (a) to Rule-2 or *inter alia*, sending it by post addressed to the corporation at the registered office, as in the instant case, in terms of sub-Rule (b) to Rule 2 of Order XXIX of CPC.

14. The report of the Deputy Sheriff shows that the writ of summons was served on **November 14, 2024** at the registered office of the defendant by speed post with A/D. Therefore, the mandated 120 days

outer limit for filing written statement had expired on **March 13, 2025** whereas the defendant had filed the instant application on **March 20, 2025**.

15. While dealing with the judgment of the Hon'ble Supreme Court **In the matter of : M/s Shalimar Rope Works Ltd. (supra)** Mr. Krishnaraj Thaker submits that the law laid down therein supports the case of the plaintiffs that sending a summon by post to the registered office of the company, unless the contrary is shown, will be presumed to be service on the company itself.

16. While dealing with the judgment **In the matter of: Pravinchandra s/o Dhanjibhaikotak (supra)** Mr. Krishnaraj Thaker submits that the case there was with regard to handing over a summons to an employee of the corporation/company, who was not authorized to receive the summon would not make the service valid, but in the instant case, the summon was first served upon the company by post at its registered office, which is in strict compliance of Order XXIX Rule 2(b) of CPC. Therefore, the ratio decided in the said judgment has no application in the facts of the instant case.

17. He submits that **In the matter of: S.V. Enterprises (supra)**, a wrong address was mentioned by the plaintiffs in the plaint insofar as the registered office of the defendant was concerned, where the writ of summons was served. Accordingly, the Co-ordinate Bench held this was not a valid service of writ of summons upon the defendant, as the summons was not served at the correct address of the defendant.

Therefore, the ratio laid down in the said judgment has no application in the facts of the case.

18. Accordingly, Mr. Krishnaraj Thaker submits that there is no merit in the application and same should be dismissed.

Decision:

19. After hearing the rival contentions of the parties and upon perusal of the materials on record, at the outset, it appears to this Court that, it is not the defendant's case that no writ of summons was served upon the defendant. The defendant contends that the provisions under Rule 2 (a) and (b) under Order XXIX of CPC, which mandatorily are required to be complied with as twin conditions at a time have not been complied with. The provisions cannot be read in isolation with each other. The defendant's contention is that when it was served through post at the registered service of the company, it was never delivered or to received by the designated persons mentioned under Rule 2(a) under Order XXIX of CPC. The contentions of the defendant is that even if the summon was served by post at the registered office of the defendant company on November 14, 2024 it was not served on the designated persons defined under Rule 2 (a). It was not a valid service of writ of summons and therefore, **November 22, 2024**, is the date and should be accepted as the date of service of writ of summons when the representative of the office of the Deputy Sheriff delivered the summon by hand service to the principal officer of the company and it was accepted accordingly. Therefore, if the date of service of summons is accepted as **November 22, 2024** then the prayer for extension of time to file written statement

through the instant application filed on **March 20, 2025** is within the mandated 120 days as provided under the amended Order VIII Rule 1 of CPC.

20. Therefore, this Court has to first decide which date shall be accepted as the date of service of summons **November 14, 2024** or **November 22, 2024**. The relevant provisions under Order XXIX of CPC are quoted below :-

“Order XXIX :

1. Subscription and verification of pleading.- *In suit by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.*

2. Service on corporation. – *Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served –*

(a) *On the secretary, or on any director, or other principal officer of the corporation, or*

(b) *By leaving it or sending it by post address to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.”*

21. Order V of CPC deals with general provisions with regard to issue of service, whereas Order XXIX specifically deals with suit by or against corporation which applies against companies within the meaning of the Companies Act. Since, a specific provision is laid down, the general provisions neither can override the same nor can prevail thereupon.

22. On a meaningful and harmonious reading of Rule 2 under Order XXIX of CPC, it appears to this Court that, where a suit is against a corporation, as in the instant case being the defendant company, the summons may be served on its secretary or any of its directors, or any of its principal officer as provided under sub-Rule (a) thereto. Sub-Rule (b) to Rule 2 provides that the summons on defendant company can be

served, inter alia, by sending it through post addressed to the defendant company at its registered office. In between the said provisions the expression used is “**or**”. Thus, on a meaningful reading of the said two provisions laid down under sub-Rule (a) and (b), this Court finds the conditions stated therein are independent to each other and cannot be read in a conjunctive manner and those are disjunctive by their nature and expressions. If hand service of summons upon any designated person, as defined under sub-Rule (a) takes place, that is sufficient and no further requirement is there to avail of any of the procedure defined under sub-Rule (b) to Rule 2 under Order XXIX of CPC and vice-versa.

23. In the facts of the instant case, the case of the defendant is that the writ of summons has been served at the registered office of the company but the service report does not disclose that it has been served upon any of the designated persons within the meaning of Rule 2(a) to Order XXIX of CPC. It is not denied by the defendant that the writ of summons has not been served at the registered office of the company. As such, on reading of the provisions as provided under both sub-Rule (a) and (b) to Rule 2 to Order XXIX of CPC on their interpretation, this Court is of the considered view that, once the writ of summons has been served at the registered office of the defendant company by the office of the Deputy Sheriff as would be evident from the Deputy Sheriff's report and the postal track report appended thereto showing delivery of postal article at the defendant's registered office on **November 14, 2024**, it is sufficient and lawful service of writ of summons on the defendant. When the summons has been served by post at the registered office of

the defendant, it is not required to be specifically delivered to or accepted by any designated person as defined under Rule 2(a) to Order XXIX of CPC.

24. In the matter of : M/s Shalimar Rope Works Ltd. (supra), the Hon'ble Supreme Court had observed as under :-

“ 7. The meaning of clause (b) has got to be understood in the background of the provisions of the Code in Order 5 which is meant for issue and service of summons on natural person. Sending a summons by post to the registered office of the company, unless the contrary is shown, will be presumed to be service on the company itself. But the first part of clause (b) has got to be understood with reference to the other provisions of the Code. In Rule 17 of Order 5 it has been provided :

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the service officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person or whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued, which a report endorsed thereon or annexed thereto stating that the has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.”

25. In the matter of: S.V. Enterprises (supra), the admitted fact was that the writ of summons was served at a wrong address which was not the address of the defendant. In the instant case, the defendant has not raised any dispute with regard to the service of summons that the same was not served at the correct address. Therefore, the ratio will not apply in the facts of the instant case.

26. In the matter of: Pravinchandra s/o Dhanjibhaikotak (supra), the summons was made over to a person who was not a designated person as defined under Rule 2(a) to Order XXIX of CPC. In the instant

case, admittedly summons has been served at the registered office of the company and subsequently on the principal officer of the company. Therefore, the ratio has no application in the facts of this case.

27. In view of the foregoing reasons and discussions, this Court is of the firm and considered view that the writ of summons was properly and lawfully served on the defendant on **November 14, 2024** at its registered office. Thus, the date of service of writ of summons should be **November 14, 2024**.

28. Accordingly, the master summon having been taken out on March 21, 2025 was beyond the mandated 120 days under the amended provisions of Order VII Rule 1(a) of the Code and as such the **application is not maintainable**. Since, the mandated 120 days under amended Order VIII Rule 1 of CPC has expired from the date of service of writ of summons, the defendant has forfeited its right to file written statement and the written statement shall not be allowed to be taken on record.

29. In view of the above, this Court is also of the opinion that there is no further requirement to scrutinize the causes shown by the defendant in its supporting affidavit praying for extension of time to file written statement. In the event, any written statement is submitted by the defendant and taken on record, the same shall forthwith be **taken of the file** and returned to the defendant without taking any cognizance of it and the suit register and/or suit records wherever it is necessary, shall be rectified accordingly recording that there shall be no written statement of the defendant on record.

30. The suit, henceforth, shall appear as **undefended suit**.

31. Resultantly, the instant application being **IA NO. GA-COM/3/2025** stands **dismissed** without any order as to cost.

(Aniruddha Roy, J.)