

**In the High Court at Calcutta
Commercial Division
Original Side**

Judgment (2)

**PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA NO. GA-COM/3/2025
In CS-COM/83/2025**

**CENTRAL BANK OF INDIA & ORS
VS
JAY KUMAR GOYAL AND ORS**

**For the plaintiffs : Mr. Debnath Ghosh, Sr. Adv.
Ms. Sabarni Mukherjee, Adv.
Mr. Orijit Chatterjee, Adv.
Ms. Shubham Raj, Adv.**

**For the defendant Nos. 1 to 4 : Mr. Sarosij Dasgupta, Adv.
Mr. Aditya Mondal, Adv.**

**For the defendant Nos. 5 to 15 : Mr. Rupak Ghosh, Adv.
Mr. Rohit Banerjee, Adv.
Ms. Oindrila Ghosal, Adv.**

For the defendant Nos. 19 & 20 : Mr. Dhruv Chaddha, Adv.

For the defendant Nos. 21 to 25 : Mr. Suryaneel Das, Adv.

Heard on : November 6, 2025

Judgment on : November 6, 2025

ANIRUDDHA ROY, J :**FACTS:**

1. This is an application filed by the defendant Nos. 5 to 15 in the pending commercial suit praying for extension of time, beyond 30 days but within 120 days from service of writ of summons to file the written statement. The prayers from the Master Summon is quoted below:

- “a) Delay of 87 days in filing the Written Statement be condoned;*
- b) An order be passed permitting the answering defendants to file its Written Statement;*
- c) Such further order and/or direction be given as this Hon’ble Court may deem fit and proper.”*

2. According to the defendants/applicants, the Master Summon has been taken out on **November 4, 2025** which is **117th day** from the date of service of writ of summons. The applicants further contend that today is the **119th day** when the application has been taken up for consideration by this Court but this contention is disputed on behalf of the plaintiffs contending that today is 120th day.
3. Since on this crucial day be it 119th or 120th, this Court considers this application, the entire record along with the office record of the Sheriff has been brought to Court.
4. The relevant dates which are necessary for adjudication of the instant application available from the records are only narrated.

5. On **June 19, 2025** the plaint was presented. **July 10, 2025** the writ of summons with the copy of the plaint appended thereto was served upon the defendant Nos. 5 to 12 and defendant No. 15. **August 18, 2025** the writ of summons with the copy of the plaint appended thereto was served upon defendant Nos. 13 and 14. **August 9, 2025** the 30 days mandated under the amendment to **Order VIII Rule 1 of Code of Civil Procedure, 1908 (CPC)** in the light of **Commercial Courts Act, 2015** (For short **2015 Act**) expired from the service of writ of summons for filing written statement for defendant Nos. 5 to 12 and defendant No. 15. **September 17, 2025** the said mandate of 30 days expired for defendant Nos. 13 and 14. **November 3, 2024** the written statement was affirmed by and/or on behalf of defendant Nos. 5 to 15. **November 4, 2025** the Master Summons was taken out. **November 7, 2025** the mandate of 120 days period from service of writ of summons under the amended provisions of **Order VIII Rule 1 of CPC** will expire (tomorrow) for the defendant Nos. 5 to 12 and 15. **December 16, 2025** the said mandate of 120 days shall expire for defendant Nos. 13 and 14.
6. The relevant amended provisions from CPC under **Order VIII Rule 1** is quoted below:

“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 to be taken on record.”

7. The plea taken by the defendants/ applicants in support of their contentions seeking extension of time beyond 30 days but within 120 days from affidavit in support of Master Summons are quoted below:

“6. There has been a delay of merely 87 days in filing the written statement counted from the date of service of summons to the filing of this instant application. By way of the present application, the answering defendants humbly seek extension of time to file the written statement. The explanation/reasons for such inadvertent delay in filing the written are detailed in the ensuing paragraphs.

- 7. The plaint filed is extremely voluminous, consisting of eleven (11) volumes of plaint. Furthermore, the plaintiffs have also filed an interim application, being GA No. 1 of 2025, which also consists of eleven (11) volumes. The exercise of perusing and scrutinizing such voluminous records, as also collection of necessary data and documents, prior to preparation of the Written Statement, was an extremely onerous and time-consuming process.*

8. *The share transfers challenged in the instant plaint, as concerning the answering defendants, occurred around 7 years ago. Resultantly, the answering defendants required more time to gathering necessary records and documents.*
9. *The answering defendants and their advocates were further occupied in defending the interim application, being GA 1 of 2025, filed by the plaintiffs. The hearing of such application before this Hon'ble Court concluded very shortly before the Puja Vacations. The advocates of the answering defendants drafted the such written statement shortly after conclusion of the aforementioned hearings. However, such written statement could not be settled during the Puja Vacation on account of non-availability of Ld. Senior Counsel during the Puja Vacation. The written statements were accordingly settled by Ld. Senior Counsel shortly after the Puja Vacations concluded.*
10. *It is re-iterated that the aforementioned delay in filing the written statement is entirely inadvertent and has occurred as a result of the aforementioned circumstances. There can be no laches and/or negligence attributed to the answering defendants in preparing and filing the said written statement.*
11. *I state that the written statement on behalf of the defendant nos. 5-15 has been prepared for filing and has been duly affirmed within the one hundred and twenty (120) days period which is the maximum limit for allowing the filling of the written statement under the Commercial Courts Act, 2015. The instant application too, is being filed prior to expiry of such period.*

SUBMISSIONS:

8. Mr. Rupak Ghosh, learned Counsel for the defendants/applicants relying upon the averments made in the supporting affidavit submits that the plaint is voluminous and divided in 11 volumes with voluminous documents annexed thereto which were relied upon by the plaintiffs. To peruse and scrutinize those voluminous records and for collecting necessary date and documents was an essential requirement for preparation of the written statement which was a time-consuming process. He further submits that the alleged share transfers under challenge in the plaint concerning the defendants, occurred around seven years ago, as a result, the defendants required more time to gather necessary records and documents before preparing the written statement.
9. Learned Counsel, Mr. Rupak Ghosh, then submits that two interlocutory applications were vigorously contested by the parties. One being an **application for injunction** filed by the plaintiffs, the other being an application for **revocation of leave granted under Section 12A of the 2015 Act** filed by the defendant No. 1. Both the applications were considered analogously and hearing was concluded on **September 22, 2025** and the judgment was delivered on **October 29, 2025**. Learned

Counsel entrusted for drafting the written statement ultimately received instruction and started to draw the written statement after hearing in the interlocutory applications were concluded. Then the written statement was settled shortly after Puja Vacation by the learned Senior Counsel.

10. In the light of above plea, Mr. Rupak Ghosh, learned Counsel submits that defendants have acted with utmost endeavor and expedition and prepared the written statement. The written statement was served on learned Advocate on Record of the plaintiff on **November 4, 2025** and the same is also annexed to the supporting affidavit in support of the Master Summons. Accordingly, if time is not extended as prayed for in the Master Summons and the written statement is not allowed to be filed, the defendants shall suffer irreparable prejudice and hardship and would have no other means to establish their defence on record.

11. In support of his contention, Mr. Rupak Ghosh, learned Counsel has relied upon an unreported decision of Co-ordinate Bench in the matter of ***Exide Industries Limited Vs. Amara Raja Energy And Mobility Limited*** dated **September 22, 2025** rendered in ***IA No. GA-COM/3/2025 in IP-COM/18/2025***.

12. Mr. Debnath Ghosh, learned Senior Counsel has vehemently opposed the submissions made on behalf of the defendants. At the threshold learned Senior Counsel submits his clients must

be granted an opportunity to file affidavit in opposition to deal with the statements made in the supporting affidavit.

13. Referring to the averments made in paragraph 6 to 11 from the supporting affidavit, Mr. Debnath Ghosh, learned Senior Counsel submits that all documents which are part of the written statement and disclosed as list of documents, as mandatory disclosure, by the defendants/applicants were all within the notice and knowledge of the defendants much prior in time when the defendants contested the interlocutory applications as all those documents and records were made part of the plaint. An alleged arbitration award has been relied upon by the defendants which was also within their notice and knowledge much prior in point of time. Therefore, there was no reason for the defendants not to file written statement within the mandatory period of 30 days under CPC.
14. Specifically referring to the averments made in paragraph 8, Mr. Debnath Ghosh, learned Senior Counsel submits that some of the share transactions may be of seven years ago but not all. Some of such alleged transactions are of recent past. Therefore, the statement made in paragraph 8 in the supporting affidavits are not true and correct and accordingly, the same stands denied by the plaintiff.
15. He then refers to the averments made in paragraph 9 to the application and submits that pendency of interlocutory

applications cannot be a ground and not provided under statute for defaulting the mandatory period of 30 days. The defendants could have filed their written statement without prejudice to their rights and contentions. In support, he has relied upon a decision of the Hon'ble Supreme Court reported at **(2019) 12 Supreme Court Cases 210, In the matter of: SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited And Others.**

16. In the light of the above submissions, learned Senior Counsel Mr. Debnath Ghosh submits that there is no sufficient cause shown or cogent reason mentioned in the supporting affidavit, on which this Court should allow the written statement to be filed after the mandatory 30 days time schedule and the application should be dismissed in limine.

DECISIONS :

17. After considering rival contentions of the parties and upon perusal of the materials on record, it appears to this Court that, the facts narrated above on perusal of the suit records are correct and undisputed.
18. At the threshold, this Court deals with the prayer made by the plaintiffs to file affidavit-in-opposition. A plain reading of the averments made in the supporting affidavit, in **paragraphs 6 to 11** thereof, it appears to this Court that the facts stated therein cannot be controverted by the plaintiffs by filing any opposition.

The relevant dates, as narrated above are admitted, as the same dates are available on the original suit record. It is an admitted fact that the plaint and the interlocutory application for injunction consist of eleven volumes filed by the plaintiffs. Even if, the contention of Mr. Debnath Ghosh, learned Senior Advocate is taken for consideration that all the alleged share transactions were not of 7 years ago and some of them are of the recent times, then also to record such contention no affidavit-in-opposition is required to be filed. The contention of the plaintiff that the pendency of the two interlocutory applications, should not debar the defendants to file its written statement within the mandate of 30 days is also not provided under any law prevailing on the issue. Therefore, this Court is of the considered view that today, on the crucial day of **119th or 120th**, affidavit-in-opposition if is directed to be filed the same will not improve the case of the plaintiff any further to controvert the averments in the supporting affidavit is concerned, save and except keeping the application pending. The point raised by the parties herein are point of law coupled with some facts and such facts are available on records. As such, the prayer for filing affidavit stands **overruled and rejected.**

19. On harmonious and meaningful reading of the amendments to Order VIII Rule 1 of CPC, it appears to this Court that, if the defendant fails to file written statement within the said period of

30 days mandate, 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 it fit but the same shall not be later than **120 days** from the date of service of summons and on expiry of **120 days** from the date of service of summons. Then the right to file written statement by the defendant shall be forfeited. Admittedly, in the instant case, the master summon has been taken out well within the **120 days** from the date of service of writ of summons. The expression used in the said amendment “.....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,.....,” undoubtedly, gives the Court an authority and power to use its discretion. However, the discretion has to be used judiciously. The use of such discretion shall always depend upon facts of each case.

20. Furthermore, when the legislature thought it fit to introduce a provision for awarding of cost as the court deems fit, under the said amended provision of CPC, this Court is of the firm view that upon payment of a penalty by the defaulting party a curative provision has been laid down by the legislature so that the defaulting party

shall not be deburred from taking its defense to the claim made by the suitor against it in an action subject to the restriction of 120 days provided thereunder.

21. The Coordinate Bench ***In the matter of: Exide Industries***

Limited (Supra) has observed as under:-

“In an adversarial system, it is always preferable for a party to contest a matter on merits rather than gain an advantage by way of not permitting their opponent to file its pleading. Of course, in view of the embargo this does not contemplate an extension being granted beyond the mandatory 120 day period. If the Written Statement has been served on the defendant within the 120 day period and a copy of an application seeking extension is on record, the Court is not to hold a mini-trial to adjudicate on the issue of condonation. In a matter of such nature, when the parties are bitterly contesting the interlocutory proceedings, the defendant cannot possibly benefit by not filing of the Written Statement to an extent that its right gets forfeited. On the contrary, refusing to condone the delay within 120 day period defeats the cause of justice. It is not necessary for the defendant to explain every day’s delay, or every hour’s delay or every second’s delay. In such matters the Courts ought to adopt a rational, common sense and pragmatic approach in considering the plea for condonation. If the written statement is on record and an application for extension of time has been filed within the 120 day period, technical considerations cannot outweigh the cause of substantial justice moreso when the delay in filing the Written Statement is unintentional and not deliberate. [Rajendra Kumar Kothari &Anr. Vs. Varun Kumar Kothari (unreported decision of the Division Bench, High Court at Calcutta dated 17th February, 2025 in A.P.O. No. 106 of 2023); SKM Agro Private Limited vs. Paritosh Biswas (unreported decision of the High Court at Calcutta dated 15th September, 2022 in IA No. GA/2/2022 in CS/1/2022); M/s. Ashok Exporters and Importers &Ors.vs. M/s. Imax Infrastructure Private Limited and Ors. (unreported decision of the High Court at

Calcutta dated 12th November, 2024 in IA NO.GA-COM/2/2024 in CS-COM.534/202]]; Skipper Limited vs. Surender Kumar Goyal (unreported decision of the High Court at Calcutta dated 22nd November, 2024 in IA NO. GA-COM/4/2024 in CS-COM/562/2024).”

22. This Court has been informed that, as of date, no appeal has been carried out from the said judgment ***In the matter of Exide Industries Limited (Supra)***.
23. Right to file written statement is also statutory right which is in conformity with the elementary principle of natural justice. If the defendant is denied of this right of filing written statement, if it is otherwise permitted to be filed by extending the time to be extended by the Court within the meaning of the four corners of the relevant statute, then such valuable right to defend the proceeding by the defendant would be defeated. For procedural lapses, substantive justice should not suffer by taking away a substantive right of a party.
24. Considering the averments made in the application, it appears to this Court that when admittedly the plaint is voluminous with plenty of documents and records, to file a written statement thereto to place its defence by the defendant, some more time even beyond the schedule under the statute may be granted as the time can be extended by the Court under the amendment to Order VIII Rule 1 of Code of Civil Procedure by exercising its discretion in the facts of the case.,

25. In view of the forgoing reasons and discussions, the mandatory period of **30 days** stands **extended till today** and the applicants/defendants shall be at liberty to file its written statement before the concerned Department by **6.00 p.m.** today as a special case as it is already **10 past 4.00 p.m.**
26. The defendants shall pay costs of **Rs.50,000/-** in favour of State Legal Services Authority, West Bengal positively within **7 days** from the date, failing which the written statement shall be returned to the defendants and no cognizance shall be taken thereupon. The applicants/defendants shall produce a copy of the money receipt for the cost to be paid to the learned Advocate on record for the plaintiff. The fiat on the written statement shall be endorsed accordingly by the officer of this Court.
27. Accordingly, the instant application being **IA GA-COM 03 of 2025** stands **allowed**.

(ANIRUDDHA ROY, J.)

Sbghosh/mg

