

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/2/2025

In CS-COM/825/2024

VEELINE HOLDINGS PRIVATE LIMITED

VS

KHETAWAT PROPERTIES LIMITED

For plaintiff:

Mr. Moti Sagar Tiwari, Adv.

Ms. Soumili Paul, Adv.

For defendant/applicant:

Mr. Pranit Bag, Barrister-at-law

Mr. Anuj Kumar Mishra, Adv.

Mr. R. R. Modi, Adv.

Ms. Amani Kayan, Adv.

Reserved on : 03.12.2025

Judgment on : 17.12.2025

ANIRUDDHA ROY, J.:

In Re: IA NO. GA-COM/2/2025

Facts:

1. The master summons and the supporting affidavit in **IA NO.GA-COM/2/2025** has been taken out by the defendant with the following prayers :-

(a) Leave to file the written statement in the instant suit as the same is being filed within the statutory mandate of 120 days;

(b) Such further and/or other Order/(s) and/or Direction/(s) be given and/or made as to this Hon'ble Court may deem fit and proper;

2. Record shows that the master summons was taken out on **August 19, 2025**. For the purpose of adjudication of this application, the merits of the plaint case or the facts stated in the plaint are not relevant to be discussed, as such, those are not stated.
3. The writ of summons, as per the report of the office of the Deputy Sheriff dated November 26, 2025 was served upon the defendant on **April 18, 2025**. The mandated **30th day** under the amended provision of Rule 1 to Order VIII of Code of Civil Procedure (for short CPC) from the date of service of writ of summons had expired on or before **May 17, 2025**.
4. The mandated **120th day** had expired on or about **August 17, 2025**. The matter was mentioned before the Coordinate Bench on behalf of the defendant on August 06, 2025, when ***'leave was granted to submit the written statement in the department in course of this day, subject to acceptance by this Court'***. The endorsement on the fiat of the original written statement shows as such.
5. In the conspectus of the above facts, the defendant has taken out the master summons praying for extension of time to file written statement.
6. Pursuant to the direction of the Court the parties to the instant application have filed their respective written notes.

Submissions :

7. At the outset, the crux of the submissions made by Mr. Pranit Bag learned Advocate appearing for the defendant is narrated. He submits

that the day when leave has been granted by the jurisdictional court to submit the written statement in the department in course of the day and the written statement has been submitted accordingly, it is sufficient within the meaning and expression of amended Rule 1 to Order VIII of CPC for filing the written statement and no formal application is required to be filed or to be on board.

8. Referring to the pre-amended provisions of Rule 1 to Order VIII of CPC and comparing the same with the amended provisions in view of the promulgation of the **Commercial Court Act, 2025** (for short **CC Act**), he submits that in a non-commercial suit, the defendant shall, within 30 days from the date of service of summons on him present written statement of his defense. It is also provided that where the defendant fails to file the written statement within the said period of 30 days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons. Whereas the amended provisions applicable for commercial suit specifically provides that where the defendant fails to file the written statement within the period of 30 days, he shall be allowed to file 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 120 days from the date of service of summons and on expiry of 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.

9. Mr. Pranita Bag, learned Advocate then refers to the Calcutta High Court amendment vide **a notification no.9681-G dated December 6, 2006**, published in the **Calcutta Gazette extraordinary, Part-I dated December 7, 2006** which has inserted two provisions under Order VIII Rule 1 of Code of Civil Procedure. The second proviso provides that the Court can in exceptional cases extend the time beyond 90 days from the date of service of summons if the defendant proves to the satisfaction of Court that due to unforeseen circumstances he was prevented from filing the written statement within the said time. The other proviso provides that Court should in no case extend such time beyond 120 days from the service of summons unless it is proved to the satisfaction of the Court that the defendant was prevented from filing written statement earlier due to the circumstance beyond his control. According to him, a conjoint reading of the said two provisions show that in non-commercial matters where written statement is filed within 120 days, the first proviso to Order VIII Rule 1 of the Code applies and no obligation is placed on the defendant to file a separate application for the written statement to be accepted by the Court. However, the first proviso is silent with regard to a situation when the written statement is filed beyond 120 days and the said circumstance is guided by the second and third proviso.
10. Learned counsel for the defendant then submits that second and third proviso to Order VIII Rule 1 of CPC casts an obligation on the defendant

to prove to the satisfaction of the Court that due to unforeseen circumstance he was prevented from filing the written statement within the time frame. As such, an application will be required to explain the delay in such circumstance, since the obligation to explain the delay is cast on the defendant. In contrast there is no obligation casts on the defendant under the first proviso to Order VIII Rule 1 of CPC. Mr. Bag further submits that on and from October 23, 2015, pursuant to the amendment through Section 16 of the CC Act, the discretion of imposing cost by the Court has been incorporated and the ceiling limit for filing written statement is provided as 120 days from the date of service of writ of summons. As such, there is no provision for filing written statement beyond 120 days which, therefore, mandates that in commercial suits, there is no provision provided in the statute for filing an application in line within the second and third proviso to Order VIII Rule 1 of CPC, when the obligation is casted on the defendant to prove to the satisfaction of the Court that written statement could not be filed within the time frame for unforeseen circumstance.

11. On facts, Mr. Bag learned Advocate submits that the written statement filed by the defendant contains an explanation in it for the delay and the Coordinate Bench upon considering the oral submissions granted leave to file the written statement on **August 06, 2025**, when the written statement was submitted before the department. He submits that the submission of written statement pursuant to the leave granted by the Coordinate Bench is in fulfilment of the mandate under the first proviso to Order VIII Rule 1 of CPC as amended in view of the CC Act.

12. Mr. Bag then submits that there is no provision for acceptance of written statement and the law provides for filing of the same and as such, when the written statement has been submitted in the department with the leave of Court, the same cannot be revisited by this Court to impose costs on the defendant or otherwise. The reasons to be recorded in writing, is the discretion of the Court. For the expression “shall” is held to be discretionary, the reasons to be recorded in writing is also discretion of the Court. On the other hand, if the expression is held to be mandatory, there is no scope of disallowing a written statement filed by the defendant within the mandated 120 days from the date of service of summons. It is also submitted that there is provision for condonation of delay in filing the written statement to the proviso to Order VIII Rule 1 of CPC. The application filed on August 19, 2025, according to Mr. Bag learned Advocate, is misconceived and although filed by abundant caution would not be required in the facts of the instant case. He further submits that the plaintiff has also filed an application for judgment upon admission and has relied on the written statement which has been filed by the defendant. As such, the plaintiff is now estopped from challenging the acceptance of written statement by the department.

13. Referring to the endorsement of the Assistant Registrar on the fiat of the written statement, learned counsel Mr. Bag submits that the Court has recorded an order in course of the proceeding without any specific application being disposed of or being considered in each order and as such, if the Court wants to record the reasons, the same may be done

in an order without any specific application since the prayer for leave to file the written statement is in the nature of an oral prayer which when being considered by the Court, it is the prerogative of the Court to record reasons in an order if the Court so desire.

- 14.** In support of his contention that no formal application is required in condoning the delay, in his alternative argument, Mr. Bag has relied upon the following decisions :-

i) *In the matter of: Sesh Nath Singh vs. Baidyabati Sheoraphuli Coop. Bank Ltd., reported at (2021) 7 SCC 313;*

ii) *In the matter of: Dwarika Prasad (D) vs. Prithvi Raj Singh, reported at 2024 SCC OnLine SC 3828;*

and

iii) *In the matter of: Bhagmal vs. Kunwar Lal, reported at (2010) 12 SCC 159.*

- 15.** With reference to the amended provisions under Rule 1 to Order VIII of CPC, learned counsel for the defendant submits that an application beyond the mandated 120 days and after filing of written statement in the department cannot lead to forfeiture of right by the defendant to file written statement. In support, he has relied upon the following decisions :-

i) *In the matter of: A. P. Distributors vs. OK Play India (P) Ltd., reported at 2022 SCC OnLine SC 1512;*

and

ii) In the matter of: M/s OK Play India Private Limited vs. A.P. Distributors – Review Petition 131/2021 & CM No.28320/2021.

- 16.** On the expression “**leave granted**” as it appears on the fiat of the original written statement, learned counsel for the defendant submits that such expression defines an order as judicial or ministerial direction or conclusion on matters outside the records. In this regard he places reliance upon the relevant portion from the **Stroud’s Judicial Dictionary of Words and Phrases, volume two, ninth edition (Pages 1753 and 1755)**. He also places reliance on the relevant portion from **Black’s Law Dictionary, 10th edition at page 1027** which defines ‘leave’ as a permission given by the Court. Leave of Court is defined to mean judicial permission to follow a non-routine procedure. The dictionary at its page 1270 defines the expression “**order**” to mean any command, direction or instruction given by the Court upon some subsidiary collateral matter arising in an action not disposing of the merits but directing some steps in the proceedings.
- 17.** Mr. Pranit Bag, learned counsel for the defendant then submits that since leave has been granted by the Coordinate Bench without imposing costs, the same should not be modified by this Court. He reiterates that there is no application filed for revocation of leave by the plaintiff and once the leave is granted, this Court should not exercise its discretion for imposing costs as the stage for such imposition would be at the first instance of consideration in the matter. There is no provision for acceptance of the written statement already filed by the defendant and

filing of the written statement in the department pursuant to the leave granted by the Court tantamount to the written statement having been taken on record. The steps towards revisiting the said leave, which would be an order of this Court, to impose costs or to revoke the leave would be prejudicial to the defendant.

18. Accordingly, learned counsel Mr. Pranit Bag, appearing for the defendant submits that the written statement already submitted in the department should be accepted and taken on record as if the defendant has filed its written statement in accordance with law.
19. Mr. Moti Sagar Tiwari, learned counsel appearing for the plaintiff at the outset submits that the leave was granted by the Coordinate Bench on 119th day without any notice to the plaintiff. There was no prayer for condonation of delay made by the defendant neither the delay beyond 30th day from the date of service of writ of summons has been condoned while granting the leave. Admittedly, on **August 06, 2025**, when leave was granted, the instant application was not filed. The instant application has been filed on **August 19th 2025** which is beyond 120th day from the date of service of summons.
20. Referring to the statements made in the instant application, Mr. Moti Sagar Tiwari, learned Advocate for the plaintiff submits that the entire argument made by the learned counsel for the defendant is not pleaded in his petition but has been made from the bar.
21. The provisions relating to non-commercial suit as provided under Order VIII Rule 1 of CPC is directory and not mandatory, where the Court can grant extension even after 90 days from the date of service of writ of

summons upon sufficient cause being shown to the satisfaction of the Court. Referring to the second proviso being, the amended provision, applicable for commercial suits, the defendant was obliged to file an application for extension of time if the written statement is to be filed beyond the mandated 30 days from the date of service of writ of summons but before mandated 120 days. In the instant case, admittedly, no application has been filed by the defendant on or before mandated 120th day. The time frame under the amended provisions of Order VIII Rule 1 of CPC is a mandate to the Court which should be followed strictly. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Desh Raj vs. Balkishan (Dead) Through proposed legal representative Ms Rohini, reported at (2020) 2 SCC 708.***

22. In the light of the above, Mr. Moti Sagar Tiwari, learned Advocate for the plaintiff submits that, the leave granted by the Coordinate Bench in pursuance whereof, the written statement has been submitted before the department was subject to satisfaction of the Court, it means, the satisfaction of the Court should be recorded on the basis of the causes shown in the formal application required to be filed by the defendant. He submits that the instant application is without any merit and is not tenable in law, since the same has been filed beyond the mandated time frame under the law and the same should be dismissed with cost.
23. He further submits that consequently, the written statement of the defendant submitted in the department should be directed to be taken

off the file and no cognizance shall be taken thereupon as the defendant has forfeited its right to file written statement.

Decision:

- 24.** After considering the rival contentions of the parties and on perusal of the materials on record, at the outset, this Court proceeds to discuss the relevant provisions for filing written statement in a commercial suit.
- 25.** After promulgation of the C. C. Act, an amendment has been effected under the provisions of **Rule 1 to Order VIII of CPC**. The relevant provision for the commercial suit is quoted below :-

“

Provided that where the defendant fails to file the written statement with 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, 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.”

- 26.** The above amended provision, *inter alia*, stipulates the following mandates :-

- (i) Where the defendant fails to file written statement within the said period of 30 days from the date of service of summons, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for the reasons to be recorded in writing and payment of such costs as the Court deems fit;
- (ii) The written statement shall not be filed later than 120 days from the date of service of summons; and
- (iii) On expiry of 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.

27. The above mandates, therefore, stipulate that the defendant first will have the opportunity to file written statement within 30 days from the date of service of writ of summons and thereafter, subject to the satisfaction of the Court by recording reasons but within the mandated 120 days from the date of service of summons and not beyond the said 120 days. Beyond the said mandated 120 days, the defendant by itself shall forfeit the right to file written statement by operation of law and Court shall not allow the written statement to be taken on record. The expression is the common being “**shall**” used by the legislature while enacting the said amended provisions for commercial suit. The expression “**shall**” in both the places that the defendant “**shall**” forfeit the right to file written statement and Court “**shall**” not allow the written statement to be taken on record, impose a clear and specific mandate on both the defendant and the Court. The power, authority and jurisdiction of Court to extend the time to file written statement mandatorily ceases after the said mandated 120 days. The object and purpose of the C.C. Act is to ensure that commercial Courts to dispose of the commercial matters expeditiously, fairly and at reasonable costs to the litigant.

28. A perusal of the statements of objects and reasons of the C. C. Act and the various amendments to Civil Procedure Code and insertion of new rules to Civil Procedure Code applicable to suits for commercial disputes shows that, it has been enacted for the purpose of providing an earlier disposal of high value commercial disputes. A purposive interpretation of the statements of objects and reasons and various

amendments of Civil Procedure Code leaves no room for doubt that provisions of the Act is required to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of commercial division of courts for speedy result in commercial disputes will be defeated. On a close perusal at the statements of objects and reasons, words such as “**early**” and “**speedy**” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow and not hampered by usual procedural delays plaguing the existing traditional legal system.

- 29.** On a meaningful reading of the amended provisions under rule 1 to Order VIII of CPC clearly shows that if the defendant is to file its written statement beyond the mandated 30 days but within the mandated 120 days from the date of service of writ of summons, then the Court has to extend the time by recording its satisfaction with reasons ***in writing*** in conjunction with the provision on payment of costs as the Court deems fit. When the expression “writing” is used in the provision, the Court is obliged to pass an order containing the reasons for extension beyond the mandated 30 days but within the mandated 120 days. When the Court is duty bound to give its reasons in writing, it is imperative and a necessity/requirement for the defendant to file a formal application in writing stating the reasons and causes which prevented the defendant not to file written statement within the mandated 30 days, otherwise the reasons necessarily to be recorded in writing by the Court will be an illusory exercise without any foundation. It cannot be conceived or

perceived of that when the statute mandates the Court to record reasons in writing, the causes on which the reasons to be given by the Court would be merely by way of an oral application without showing the causes on record. Therefore, if the defendant applies for extension of time to file written statement beyond the mandated 30 days, such an application has to be, must be and should be a formal application in writing.

- 30.** On the fiat of the written statement leave granted by the Coordinate Bench to submit the written statement is quoted below in verbatim :

“Leave granted to submit the written statement in the department in course of this day, subject to acceptance by this Court.

Assistant Registrar
High Court, O.S., Calcutta”

- 31.** The above endorsement shows that leave was granted to submit the written statement in the department, subject to acceptance by the Court. This is not an unconditional leave. The language itself shows the leave granted was subject to the acceptance by the Court. Merely submitting the written statement with the department is not an acceptance by the Court, neither it means filing of written statement in accordance with law. At the highest, it may be construed as depositing the written statement with the department and if the Court accepts the same then only the written statement will be taken on the suit record permanently. The expression used “**acceptance**” shall have to be understood and read in the light of the relevant provisions laid down under the amended rule 1 to Order VIII of CPC. Acceptance by the Court means acceptance of the causes to be shown by the defendant,

when it prays for extension of time to file written statement beyond the mandated 30 days. The acceptance of Court will be conclusive when the Court by recording its reasons in writing will accept the causes shown by defendant in a formal written application filed by the defendant. Grant of leave by the Court to submit the written statement in the department subject to acceptance by the Court is a procedural act of Court, which subsequently ought to be qualified and ratified by following the specific provisions of law laid down under the statute in that regard, the amended rule 1 to Order VIII of CPC, in the instant case. Thus, the written statement submitted by the defendant with the leave of Court cannot be construed or accepted as filing of written statement beyond the mandated 30 days. With the said endorsement when the written statement has been submitted in the department, the same would not mean filing of written statement in strict compliance of amended provisions of rule 1 to Order VIII of CPC.

- 32.** On a close reading of the amended provisions under rule 1 to Order 8 of CPC, this Court is of the firm and considered view that beyond the mandated 30 days therein, if the defendant wishes to file its written statement, it should mandatorily file a formal application in writing by showing the causes as to why the defendant was prevented not to file the written statement within the said mandated 30 days. In the event, the Court is satisfied with the causes shown in the written application, then the Court by recording reasons in writing may allow the written statement to be taken on file, subject to its satisfaction. Such an application as of right of the defendant can be filed till the mandated

120 days from the date of service of summons is expired for consideration by the Court. So, the defendant has a right to file such an application within the mandated 120 days under the amended rule 1 to Order VIII of CPC. Immediately upon expiry of the said mandated 120 days, the statute clearly specifies that the defendant shall forfeit its right to file written statement. The said provision for forfeiture of right read with the expression used under amended rule 1 to Order VIII of CPC that “**Court shall not allow the written statement to be taken on record**” makes it evident that it is also a mandate on the Court that the Court will lose its jurisdiction and becomes *functus officio* immediately upon expiry of the said mandated 120 days. Therefore, no application for extension of time to file written statement shall be filed before the Court or shall be taken on the board by the Court beyond the said mandated 120 days as provided under the amended rule 1 to Order VIII of CPC. It is equally a mandate provided under the said amended provisions of CPC that beyond 30 days, if time to file written statement is extended upon satisfaction of the Court by recording reasons in writing, awarding of costs on the defendant by Court is an obligation and duty of the Court in law and there is no discretion or power of Court to waive the same.

- 33.** The law is equally well settled that when a specific provision is laid down under a statute, the same shall override the general provisions or procedures of law, even though laid down in the statute. The specific provision of the statute will have to be specifically applied in the matters

where it is applicable and no other provisions can be applied. All other modes for application of other provisions are expressly forbidden.

- 34.** Dealing with the amended provisions under rule 1 to Order VIII of CPC, the Hon'ble Supreme Court ***In the matter of: SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited and Ors., reported at (2019) 12 SCC 210*** had observed as under :-

8) *The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:*

“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 days, 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 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.”

Equally, in Order VIII Rule 1, a new proviso was substituted 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.”

This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:-

“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 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.”

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days.

However, 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 VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.

.....
.....

10) *Several High Court judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. See Oku Tech Private Limited vs. Sangeet Agarwal & Ors. by a learned Single Judge of the Delhi High Court dated 11.08.2016 in CS (OS) No. 3390/2015 as followed by several other judgments including a judgment of the Delhi High Court in Maja Cosmetics vs. Oasis Commercial Pvt. Ltd.*

11) *We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught.”*

35. The Hon’ble Supreme Court ***In the matter of: Desh Raj (supra)*** had observed as under :-

“11. *Hence, it is clear that post coming into force of the aforesaid Act, there are two regimes of civil procedure. Whereas commercial disputes [as defined under Section 2 (c)*

of the Commercial Courts Act, 2015] are governed by CPC as amended by Section 16 of the said Act; all other non-commercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

12. *The judgment of Oku Tech relied upon by the learned Single Judge is no doubt good law, as recently upheld by this Court in SCG Contracts (India) (P) Ltd. vs. K.S. Chamankar Infrastructure (P) Ltd. But its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with courts to condone any delay is applicable only to commercial disputes, as the judgment was undoubtedly rendered in the context of a commercial dispute quo the amended Order 8 Rule 1 CPC.*

13. *As regards the timeline for filing of written statement in a non-commercial dispute, the observations of this Court in a catena of decisions, most recently in Atcom Technologies Ltd. v. Y.A. Chunawala & Co. holds the field. The unamended Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of courts to condone certain delays.”*

36. In the matter of: Sesh Nath Singh (supra) it was a judgment dealing with the provisions of the Insolvency and Bankruptcy Code, 2016 (for short IBC). As there is a specific statute there, namely, C.C. Act and the specific amendment of CPC is there under amended rule 1 to Order VIII of CPC, which are applicable for commercial disputes, the ratio decided in the said judgment has no relevance in the facts and circumstances of the instant case.

37. In the matter of: Dwarika Prasad (D) (supra), it was a judgment arising out of a writ petition in connection with the provisions laid down under Order 9 Rule XIII of CPC, which has got no relevance in the facts and circumstances of this case. The civil suit involved in the judgment was a non-commercial suit. The judgment **In the matter of: Bhagmal (supra)** was rendered much prior to the C.C. Act came into force and the subject matter of the said judgment was not a commercial dispute.

Thus, the ratio of the said judgment has no application in the facts and circumstances of this case.

38. In the matter of: A. P. Distributors and Another (supra), the law laid down prior thereto **In the matter of: SCJ Contracts (India) Private Limited (supra)**, was not considered.

39. In view of the forgoing reasons and discussions, this Court finds and holds:-

- (a) A formal application in writing is mandatorily required to be filed by the defendant, if the defendant prays for extension of time to file written statement beyond the mandated 30 days under the amended provisions of rule 1 to Order VIII of CPC;
- (b) The extension of time, if granted by the Court beyond the mandated 30 days, it has to record reasons in writing on the basis of the causes shown in the formal application required to be filed by the defendant upon payment of costs; and
- (c) Beyond the mandated 120 days from the date of service of summons, as provided under the amended rule 1 to Order VIII of CPC, no application for extension of time to file written statement by the defendant can be filed nor the same can be accepted and taken on record, as the Court becomes *functus officio* then.

40. In view of the above, the written statement submitted with the department by the defendant without any formal application being filed by the defendant, is directed to be **taken off** the file and no cognizance shall be taken thereupon. The suit register shall be reflected as such.

- 41.** The instant suit, henceforth, shall appear as **undefended suit**
- 42.** Resultantly, the instant application being **GA-COM/2/2025** filed beyond the mandated 120 days, stands **dismissed**, without any order as to cost.

(Aniruddha Roy, J.)