

OIPD-4

ORDER SHEET

IA No.GA-COM/2/2026
IN
IP-COM/55/2025
IN THE HIGH COURT AT CALCUTTA
INTELLECTUAL PROPERTY RIGHTS DIVISION

THE SOUTH POINT EDUCATION SOCIETY
VS.
SOUTH POINT SCHOOL

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 16th September, 2026.

Mr. Rajeev Kumar Jain, Ms. Yamini Mahawar,
Advocates for the plaintiff.

Mr. Sarosij Dasgupta (VC), Ms. Ruchira Manna, Mr. Nasim Ahmed,
Mr. Subha Pathak, Advocates for the defendant.

The Court : This is an application for permitting the written statement which has been retained with the record by an order dated 20th May, 2026 be accepted by condoning the delay in filing the same.

The Writ of Summons was served on the defendant on 19th January, 2026. In terms of the Writ of Summons the prescribed time limit for the defendant to file the written statement was 30 days from the date of receipt of the Writ of Summons which expired on 18th February, 2026. The defendant has annexed a copy of the written statement with this application which is affirmed on 11th May, 2026. The defendant has taken out the Master's Summons 14th May, 2026 i.e. on the 115th day from the date of receipt of the Writ of Summons. In the Master's Summons the defendant has sought for condonation of delay of 112 days. The Master's Summons

was made returnable on 20th May, 2026. This application has been filed on 15th May, 2026 in the central filing department of this Court.

It is the case of the defendant that for the reasons stated in the affidavit in support of the Master's Summons the defendant was unable to file the written statement within the stipulated time period and therefore, seeks condonation of delay. The written statement was permitted to be taken on record by an order dated 20th May, 2026 passed in this application subject to being accepted on the basis of the decision to be arrived at in this application.

The plaintiff, on the other hand, submits that the conduct of the defendant is deplorable. The grounds shown for being prevented to file the written statement within the stipulated time period are not only inconceivable but raise serious doubt as to its authenticity and genuineness on the face of record. The plaintiff also says that the written statement was allowed to be kept with the record on 20th May, 2026 i.e., after passage of 120 days. By that time the defendant's right to file the written statement since the suit with which we are concerned is a commercial suit under the provisions of the Commercial Courts Act, 2015 (hereinafter referred to as '2015 Act') stood forfeited as observed by the Hon'ble Supreme Court in the judgment reported in *(2019) 12 SCC 210 [SCG Contracts (India) Private Limited Vs. K. S. Chamankar Infrastructure Private Limited And Others]*.

It is not in doubt that the defendant has approached the Court on the eve of the expiry of the statutory period of 120 days available for filing written statement as provided under Order VIII of the Code of Civil Procedure, 1908 (in short CPC) which has been made applicable to

commercial suits filed under the provisions of the 2015 Act. The fact, however, remains that the Master's Summons was taken out prior to expiry of 120 days and was made returnable on 20th May, 2026, i.e. beyond 120 days. It is settled position of law that the Master's Summons is the application and the affidavit in support thereof are only the grounds for seeking the relief claimed in the Master's Summons. The application was, therefore, made before expiry of 120 days and the same was pending on 20th May, 2026 when the written statement was directed to be kept with the record. The defendant had no role in respect of the returnable date of the Master's Summons though it could have come much before and taken out the Master's Summons to be returnable prior to expiry of 120 days. The written statement had been affirmed on 11th May, 2026 i.e., prior to taking out the Master's Summons. The defendant, however, chose not to do so. The conduct of the defendant may not be appreciable but when the defendant has approached the Court prior to expiry of 120 days, the defendant cannot be refused the right of having the application heard on merits only on the ground that it is beyond 120 days. The application though appeared in the list after 120 days but the Master's Summons having been taken out prior to expiry of 120 days and that the application was filed on 15th May, 2026 permits the Court to receive, try and determine the application even after expiry of 120 days. That apart, the point raised by the plaintiff that the written statement could not have been allowed to be kept on record after expiry of 120 days also lacks a foundation since the application on the basis of the Master's Summons taken out on 14th May, 2026 had been filed on 15th May, 2026, i.e. prior to expiry of 120 days. That

apart and in any event, the matter was mentioned before the Bench having the determination to bring to its notice about the expiry of the 120 days period since the regular Bench was not available.

In the aforesaid facts and circumstances, the application is taken up for consideration on merits. Although, the grounds stated in the affidavit in support of the Master's Summons are not only far from convincing but also unsatisfactory, yet for the ends of justice and in view of the ratio laid down by the Hon'ble Supreme Court in its judgement and order dated 31st August, 2026 passed in *Special Leave to Appeal (C) No(s).25197 of 2026 [Gokul Chand Manoj Kumar And Sons (GM And Sons) Private Limited & Anr. Vs. K. A. S. Zainulabdin And Co.]*, and that the written statement has been affirmed on 11th May, 2026, the defendant is permitted to file the written statement by 29th September, 2026, subject to payment of costs assessed at Rs.75,000/-. Out of Rs.75,000/-, Rs.25,000/- has to be paid to the plaintiff and the balance Rs.50,000/- shall be divided into two equal halves of Rs.25,000/- each and respectively paid to the High Court Legal Services Committee and the State Legal Services Authority. The payment of cost is a precondition to the acceptance of the written statement which has been allowed to be kept with the record in terms of the order dated 20th May, 2026. The department if approached by the defendant for accepting the written statement affirmed on 11th May, 2026 shall accept the same after ascertaining the payment of cost and that the same is in proper form and order. The written statement which is directed to be kept on record shall be placed before the department along with the suit records so that on the request of the defendant in terms of this order the same can be accepted.

Immediately after the written statement is accepted, a copy thereof with legible copy of the annexures shall be served upon the learned Advocate representing the plaintiff.

The application being GA-COM 2 of 2026 is, accordingly, disposed of.

(ARINDAM MUKHERJEE, J.)

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