

IN THE HIGH COURT AT CALCUTTA
INTELLECTUAL PROPERTY RIGHTS DIVISION
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE ARINDAM MUKHERJEE

IA No. GA-COM/7/2025

In

IP-COM/62/2024

BENGALI REMIX MUSIC (OPC) PRIVATE LIMITED

Versus

GODHULI BELA MUSIC AND ORS.

For the Plaintiff : Ms. Swarupa Ghosh, Adv.
Ms. Madhumita Patra, Adv.
.....Advocates

For the Defendant/respondent no.2 : Mr. Shuvasish Sengupta, Adv.
Mr. Shounak Mukhopadhyay, Adv.
Ms. Shyantee Datta, Adv.
Ms. Samaita Das Chowdhury, Adv.
..... Advocates

For the Defendant/respondent No.3 : Mr. Purnendu Modak, Adv.
.....Advocate

Heard On : : 24th March, 2026.

Judgment on : 24th March, 2026.

Arindam Mukherjee, J:

The Court:- This is an application for condoning the delay and accepting the written statement on behalf of the defendant no.2 in this suit by granting necessary extension of time. The suit is filed under the provisions of Commercial Courts Act, 2015 (hereinafter referred to as said Act) and is as such a commercial suit.

The admitted facts are as follows:

- 1) The suit was filed on 27th June, 2024.
- 2) The writ of summons was served on the defendant on 28th April, 2025.
- 3) The last date for filing of the written statement by the defendant no.2 was 28th May, 2025.
- 4) The suit was dismissed for default on 12th August, 2025.
- 5) The suit was restored upon an application being made by the plaintiff a copy whereof was served on the defendant no. 2 and the suit was restored on 18th September, 2025.
- 6) The application by the defendant no.2 has been filed on 29th October, 2025 i.e. beyond 120 days from the date of receipt of the writ of summons by the said defendant no.2.

The defendant no.2 has made an interesting argument. It is the case of the defendant no.2 that on suit being restored, the said defendant was entitled to a fresh summons. Unless the fresh summons has been issued, the time to file the written statement does not commence on the restoration of the suit having taken place. In this context the defendant no.2 has relied upon a

Division Bench judgment reported in **2012(2) CHN 377 Mithu @ Asit Majumder Vs. Sanjib Kumar Chakraborty.**

It is also the case of the defendant no.2 that the original time fixed under the writ of summons served on the defendant no.2 on 28th April, 2025 has become otiose with the dismissal of the suit. Unless a fresh writ of summons has been issued, the question of the commencement of the time to file the written statement will not start. The defendant no. 2, alternatively argues that assuming without admitting that the time to file written statement commenced from 25th April, 2025 then also the same came to an halt on 12th August, 2025. Immediately upon restoration of the suit on 18th September, 2025 the defendant no. 2 had taken steps to seek extension of time to file written statement. The affidavit to support the Master's summons for such prayer was affirmed on 23rd September, 2025 and the written statement was also affirmed on 23rd September, 2025. The master's summons have been taken out on 24th October, 2025 being the re-opening day after the puja vacation which commenced from 26th September, 2025. The Master's summons have been taken out within 120 days from 28th April, 2025 and the application has been filed on 28th October, 2025 to be taken up on 29th October, 2025. The defendant no. 2 was also proceeded by sufficient cause in not filing the written statement in time which has been duly explained in the application.

The defendant no. 2, therefore, prays for condonation of delay in filing the written statement and to accept the same by granting necessary extension.

The plaintiff by placing a list of dates says that in the facts of the case it is immaterial whether they have come after 120 days from the date of receipt of

the original summons issued pursuant to filing of the suit for extension of time to file the written statement as the yardstick is to file the written statement within 120 days. The argument of the defendant No.2, is of no value since the period of 120 days have elapsed and no written statement has been filed within such time. Even if the time between 12th August, 2025 and 18th September, 2025, being the time period for which the suit remains dismissed is excluded then also 120 days have been exhausted and as such no extension of time can be granted.

The plaintiff further says that by computing the time period between 28th April, 2025 (when the writ of summons was served) and 29th October, 2025 (when the instant application was filed) it will be evident that 184 days elapsed in between. Even if the time period of 37 days that is between 12th August, 2025 (when the suit was dismissed for default) and 18th September, 2025 (when the suit was restored) is excluded from the said time period of 184 days, the difference is 147 days. The defendant no.2, therefore, has also approached this Court after expiry of 120 days. The Court as held by the Supreme Court in the judgment reported in **2019 (12) SCC 210 (SCG Contracts India (P) Limited V. K.S. Chamankar Infrastructure (P) Limited)** becomes *functus officio* in granting extension when the application has been made beyond 120 days or on expiry of 120 days from receipt of the summons as the right of the defendant to file the written statement stands forfeited.

On behalf of the plaintiff, it is further submitted that the defendant no.2 did not file the written statement within the time frame provided under the Code of Civil Procedure, 1908 (in short, 'CPC') applicable to a commercial suit

after having been served with the writ of summons. The suit was dismissed subsequent to the expiry of the time period for filing of the written statement. The suit having been restored relates back to the date of initial filing. Even if the period for which the suit remained dismissed is excluded then also the defendant no.2 has approached the Court after expiry of 120 days. There is no explanation in the application for condoning the delay and granting extension of time.

The plaintiff says that the judgment relied upon by the defendant no.2 reported in ***Asit Majumder*** (supra) has no application in the facts of the instant case.

The said judgment was rendered in a suit which is admittedly not under the 2015 Act, or in respect of a suit filed in this court which is governed by the provisions of the Original Side Rules of this Court. Moreover, it will be apparent from the said judgment itself that immediately after restoration of the suit in that case the witness action commenced. The Division Bench of this Court while discussing the fact has considered the hardship that was faced by the defendant in the said suit on not having the notice of restoration and the witness action having commenced immediately after the restoration. In the instant case, the defendant no.2 was served with a copy of the Master's Summons and the supporting affidavit for restoration of the suit. The defendant no.2 was represented on 3rd September, 2025 when the restoration application was moved. The said defendant had sought for filing an objection which opportunity was granted by the Court. The defendant no.2 was, however, not represented on 18th September, 2025 when the suit was ultimately

restored. It, therefore, cannot be contended in the instant case that the defendant no.2 did not have any notice about the plaintiff's application for restoration of the suit. The defendant no.2 appeared on the first day but chose not to appear on the next date despite having specific knowledge that the application was made returnable on 18th September, 2025 as will appear from the order dated 3rd September, 2025. The application by the defendant no.2, according to the plaintiff, is, therefore, in abuse of process of Court and law with an ulterior motive and mala fide intent and that too after this Court has been denuded of its jurisdiction to condone the delay and extend the time to file written statement in case of a commercial suit.

The explanation given by the defendant no.2 in his application is devoid of particulars, vague and ambiguous. On a conjoint reading of the various paragraphs of the said application it will appear that no satisfactory ground has been made out in support of sufficient cause for which the defendant no.2 was prevented from filing the written statement within the timeframe.

The defendant no.2 in response submitted that the defendant no.2 has filed the said application on the 118th day from the date of receipt of the writ of summons. Once the application is filed within 120 days, the issue of this Court losing jurisdiction to condone the delay stands eliminated as a litigant cannot be made to suffer if the application is not taken up in time by the Court for hearing after the same having been filed in time. The defendant no.2, in an elucidating time period of 118 days, says that between 28th April, 2025 and 12th August, 2025, 106 days elapsed. The balance portion of 120 days should be calculated from 18th September, 2025. Admittedly, the Court closed for the

Annual Vacation on 26th September, 2025. Eight days elapsed between 18th September, 2025 (being the date of restoration of the suit) and 26th September, 2025 (being the date on which this Court closed for the puja vacation for the said year). The affidavit in support of the Master's Summons and the written statement was affirmed on 23rd September, 2025. The defendant no.2 approached the Master on the reopening date i.e. 24th October, 2025 when the Master's Summons was signed for being taken out with the date of 29th October, 2025 when the same was to be moved before the appropriate Bench. The affidavit in support of the Master's Summons which was affirmed on 23rd September, 2025 had been filed along with the Master's Summons on 28th October, 2025 for being taken up on 29th October, 2025. There is as such no delay, no mala fide intent or malice on the part of the defendant no.2 as alleged by the plaintiff.

After hearing the parties and considering the materials on record, I find that the defendant no.2 had specific knowledge as to the institution of the suit when the first interim application filed in the suit being served on the said defendant after an ex parte order of injunction was passed on 29th July, 2024. The plaint was amended pursuant to order dated 27th February, 2025 and only thereafter the writ of summons was lodged for being served on the defendant no.2 which the defendant no.2 has admittedly received on 28th April, 2025. A suit on being restored dates back to the original date of the filing and as such it is recorded in any order of restoration that the suit is restored to its original file and number.

In the instant case, though the restoration took place on a day when the

defendant no.2 was unrepresented, yet from the chain of events it is clear that the said defendant on having been served with the Master's Summons appeared on 3rd September, 2025 and obtained directions for filing of affidavit. The application for restoration of the suit was made returnable on 18th September, 2025 as will appear from the order dated 3rd September, 2025 passed in the presence of the defendant no.2. It, therefore, cannot be said that the restoration took place without the knowledge of the defendant no.2 for which a fresh summons was required to be served on the defendant no.2 once the same had been served prior to restoration. This factual difference also takes out the instant case from the ratio laid down in **Asit Majumder** (supra) wherein the facts were different. In the said case the suit was restored without the knowledge of the defendant and was immediately placed for witness action to which the defendant in that case did not have any specific notice or knowledge. In the instant case, the defendant No.2 had specific knowledge about the restoration application as also of the date (18th September, 2025) when the said application was made returnable after completion of affidavit. Non appearance on the said date with knowledge does not make the restoration ex parte. Assuming without admitting that the defendant no.2 is required to be given the benefit of 37 days then also the extension of time by condoning the delay will not be in an automatic course even if the defendant had approached prior to expiry of 120 days. By accepting the contention of the defendant no.2 that it approached on the 118 day by accepting the computation made by the said defendant no.2, it only permits the application of the defendant no.2 to be considered on merit which is otherwise not permissible if a defendant in a

commercial suit approaches the Court beyond 120 days from the date of receipt of the summon. I am, however, not inclined to accept the argument of the defendant NO.2 that the time will not start running unless fresh summons are served under the provisions of the Original Side Rules of this Court or the provisions of CPC. There is no scope of serving fresh writ of summons once it has been served even if the suit is subsequently dismissed for default and thereafter restored. In the instant case, the defendant no.2 had specific knowledge of the restoration application. By giving the benefit to the defendant no.2 that it approached the Court prior to expiry of 120 days the application of the said defendant is required to be considered on merit.

The Hon'ble Supreme Court in a very recent judgment reported in **2025 SCC OnLine 1969 (Shivamma (Dead) by Lrs. Vs. Karnataka Housing Board and Others)** has laid down the parameters for demonstrating the grounds for being prevented by sufficient cause in case where a party is unable to approach the Court in time and seeks condonation of delay for the same. On a consideration of the application in the light of the said judgment and other judgments of the Supreme Court operating in the said field, I am unable to accept the explanations given by the defendant no.2 in the instant application as satisfactory grounds to establish that they were prevented by sufficient cause for not having filed the written statement in time.

The defendant no.2 was aware of the fact of filing of the suit immediately after the same was filed on the injunction application having served on the said defendant. The application was moved ex parte and as such compliance of the provisions of Order XXXIX Rule 3 of CPC was necessary. If the copy of the

plaint was not served along with the application then the defendant no.2 ought to have brought this fact to the notice of the Court. The defendant no.2 also did not write any letter to the plaintiff or its advocate stating that the copy of the plaint has not been served as the same is a ground for vacating the ex parte interim order.

The defendant no.2 was all along represented by advocates. It is to be presumed that the said defendant had been made aware about the cut off date of 120 days as also the object of the 2015 Act. Averment in the application also demonstrates that the defendant no.2 had engaged advocates for drafting the written statement. Approaching the Court at belated stage for filing the written statement in itself is an attempt to frustrate the object of the 2025 Act which speaks of a time bound disposal of commercial suits. The defendant no.2 had sufficient time from the date of receipt of the writ of summons (28th April, 2025) till 12th August, 2025 (when the suit was dismissed for default). The defendant no.2 did not file the written statement though it was obliged to do so within 30 days from the date of receipt of the writ of summons. The defendant no.2 did not take any step for extension of time to file the written statement on expiry of the initial period of 30 days before the suit got dismissed for default on 12th August, 2025. The defendant no.2 also did not approach the Court for extending the time and acceptance of the written statement immediately after 18th September, 2025 when the suit was restored. Although, the affidavit in support of the Master's Summons and the written statement was affirmed on 23rd September, 2025, yet the defendant no.2 did not approach the Court for short service of the Master's Summons which was available to the said

defendant or to move the application before the Vacation Bench.

It is apparent that the defendant no.2 is trying to take undue advantage of the dismissal of the suit when its conduct on a complete scrutiny of the fact is clearly mala fide. The delay is not only negligent but also in action which lacks bona fide. The explanation is far from being convincing on the contrary are vague and unreasonable, therefore, not acceptable at all.

The affirmation of the written statement on 23rd September, 2025 also does not give a right to the said defendant for filing the same beyond 120 days as has been held by the Division Bench of this Court in the judgment and order dated 17th February, 2025 passed in ***APO/106/2023 (Rajendra Kumar Kothari And Anr. V. Varun Kothari And Anr.)*** arising out of ***CS/161/2022 (CS-COM/403/2024)***.

After considering the aforesaid facts and circumstances, I am not inclined to condone the delay and extend the time for the defendant no.2 in filing the written statement. The application as a consequence thereof fails and is dismissed, however, without any order as to costs.

(ARINDAM MUKHERJEE, J.)

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