

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

IA NO.GA 1 OF 2022
IN
CS 45 OF 2022

M/S. NEO CARBONS PVT. LTD.
Versus
NATIONAL INSURANCE COMPANY LIMITED

IA NO.GA 3 OF 2022
IN
CS 45 OF 2022

M/S. NEO CARBONS PVT. LTD.
Versus
NATIONAL INSURANCE COMPANY LIMITED

IA NO.GA 4 OF 2022
IN
CS 45 OF 2022

M/S. NEO CARBONS PVT. LTD.
Versus
NATIONAL INSURANCE COMPANY LIMITED

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 4th November, 2022.

Appearance:
Mr. Neha Singh, Adv.
For plaintiff
Mr. Debajyoti Datta, Adv.
Mr. Arijeet Dass Mullick, Adv.
For national Insurance Co. Ltd.

The Court:- In this suit filed in the Commercial Division three applications are pending as on date.

The first application in order of time is GA 1 of 2022 which was filed by the plaintiff on 23rd February, 2022, inter alia, for injunction and other

consequential reliefs. The writ of summons in the suit has been served on the sole defendant on 31st March, 2022. The defendant had taken out an application for extension of time to file the written statement being GA 2 of 2022. This application was dismissed as withdrawn on 23rd August, 2022 as it contains certain formal defects with leave to file afresh on the self-same cause.

The defendant has made a second application for extension of time to file written statement being GA 4 of 2022 on 29th September, 2022. It appears from the application being GA 4 of 2022 that a written statement has been prepared, verified and affirmed on 29th July, 2022. It also appears that the written statement has been verified and affirmed on the 120th day from the date of receipt of the writ of summons taking into account that 31st March, 2022 is the date when such summons was received. The defendant has also taken out an application being GA 3 of 2022, inter alia, for rejection of plaint and/or dismissal of the suit. This application has been filed on 15th September, 2022. The defendant says that since they have made an application for rejection of the plaint and/or dismissal of the suit which goes to the root of the matter, the question of filing written statement will not arise unless the same is decided against the defendant. The plaintiff seeks an adjournment in the matter. Even on 31st October, 2022 when the applications were called on no one appeared on behalf of the plaintiff and, as such, the same was adjourned.

The defendant is right in its submission that an application for rejection of plaint goes to the root of the matter and there has been a consistent view in such a situation the written statement is directed to be filed only if such demurrer application fails. However, this view is in

respect of suits in the Ordinary Original Civil Jurisdiction and not with regard to suits in the Commercial Division.

In view of the provisions of the Commercial Courts Act, 2015 read with the amended provisions of Order VIII of the Code of Civil Procedure, 1908 made applicable to suits arising out of commercial disputes there is a fixed time frame provided for filing of the written statement. A written statement in such a suit cannot be filed under any circumstances beyond 120 days. This point is no more res integra.

Considering the facts that the written statement has been affirmed on 29th July, 2022 that is on 120th day the defendant is permitted to file the written statement in the department without prejudice to its rights and contentions in GA 3 of 2022. However, no copy of the written statement shall be served on the plaintiff until further orders of this Court. The acceptance of the written statement will, however, be finally decided after the demurrer application being GA 3 of 2022 is finally decided.

GA 4 of 2022 is accordingly disposed of.

Let the application being GA 3 of 2022 appear in the list on 15th November, 2022. The application being GA 1 of 2022 appearing under the heading "Adjourned Motion" be placed in the monthly list of December, 2022 under the same heading.

(ARINDAM MUKHERJEE, J.)