



2025:DHC:10289



\$~60

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 21.11.2025

+

CM(M) 2252/2025, CM APPL. 73217/2025 & 73216/2025

M/S OM FIRE SAFETY COMPANY PVT LTDPetitioner

Through: Mr. Jatin Sapra and Ms. Jahanvi
Paliwal, Advocates

versus

UMAKANT

.....Respondent

Through: Mr. Navneet Sharma, Advocate

CORAM: JUSTICE GIRISH KATHPALIA**ORDER (ORAL)**

1. Petitioner/defendant has assailed order dated 17.10.2025 of the learned commercial court, whereby the Written Statement (*which had earlier been taken on record subject to payment of cost*), was taken off the record on account of non-payment of cost. Having heard learned counsel for petitioner/defendant, I do not find it a fit case to even issue notice.

2. It appears that in the commercial suit, the Written Statement was not filed by the petitioner/defendant in time. By way of order dated 07.08.2025, application of petitioner/defendant under Order VIII Rule 1 CPC was



2025:DHC:10289



allowed and delay in filing the Written Statement was condoned subject to payment of cost; and since the counsel for respondent/plaintiff submitted that he was not inclined to file replication, process of admission/denial of documents was taken up, but since neither the authorized representative nor the main counsel for petitioner/defendant was present, nor even the documents of the defendant were with the Written Statement, the suit was adjourned after closing the opportunity to admit or deny the plaintiff's documents. On the next date, 01.09.2025 also, the cost was not paid and application under Order XIII A CPC of respondent/plaintiff was posted to 17.10.2025 for reply and arguments. On 17.10.2025 also, in the first call, matter had to be passed over awaiting the defendant side; and in the second call, when counsel for respondent/plaintiff raised the issue of non-payment of cost, counsel for the petitioner/defendant expressed unawareness and was offered another passover, but she stated in a casual manner "*de denge*". It is in such circumstances that the learned commercial court took the Written Statement off the record by way of the impugned order.

3. Learned counsel for petitioner/defendant contends that there was confusion as to whom the cost had to be paid because order dated 07.08.2025 was silent in this regard. Admittedly, no effort was made by learned counsel for petitioner/defendant to get the doubt (*if at all the same was genuinely there*) clarified across the period from 07.08.2025 to 17.10.2025. In any case, where the order is silent as to whom the cost is to be paid, it is clear that the cost has to be paid to the opposite side which has suffered adjournment. I find the excuse for non-payment of cost completely



flimsy. It is not a matter of the amount of the cost. It is a matter of compensating the other side who suffers due to default. The explanation for non-payment of cost is completely flimsy and does not appeal.

4. In the case of ***Manohar Singh vs D.S. Sharma***, (2010) 1 SCC 53, the Hon'ble Supreme Court elaborately laid down law related to Section 35B CPC as well as consequences of non-payment of cost. It was held that as a consequence of non-payment of cost, the defaulting party has to be prohibited from participating in further proceedings.

5. Further, in response to a specific query (*in order to ensure that no injustice takes place*), learned counsel for petitioner/defendant submits that the defence sought to be raised by the petitioner/defendant is to the effect that the goods supplied were defective. But admittedly, prior to filing of the Written Statement, no notice in this regard was ever issued to the respondent/plaintiff by the petitioner/defendant.

6. The Commercial Courts Act was enacted with a specific aim of expediting the commercial disputes. Any interpretation of any legal provision that dilutes the provision would militate against the basic philosophy behind creation of commercial courts. The commercial courts and the processes adopted by the same cannot be allowed to be dealt with in such casual manner, so as to convert the same into general civil suit. Where a litigant does not strictly adhere to the timelines and even thereafter, despite indulgence extended by the trial court, opts to somehow protract the proceedings, no further indulgence can be extended.



2025:DHC:10289



7. Considering the above circumstances, I am unable to find any infirmity, much less any perversity in the impugned order that would call for intervention under Article 227 of the Constitution of India, so the same is upheld. The petition as well as the accompanying applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

NOVEMBER 21, 2025/as