

UPLOADED ON 29.06.2026

**IN THE COURT OF PRINCIPAL COMMERCIAL COURT,
EGMORE, CHENNAI**

**Present: Thiru. S.GANAPATHISAMY, B.A.B.L.,
Principal Judge**

Dated this 29th day of June 2026, Monday

I.A.No.3 / 2025 in C.O.S. No.214 / 2024

A2Z Infra Services Limited,
Represented by Authorized Representative,
Plot No. B-38, Cosmos Building,
Sector -32, (Near Jharsa Chowk),
Gurgaon (Haryana - 122 002).

..Petitioner/ Defendant

-Versus-

Paru J Shah, Proprietrix,
Arihant Agencies,
Rep. by. Power Agent Jayesh R.Shah,
New No. 13, Old No.6, Vadamalai Street,
Pursawalkam, Chennai - 600 007.

...Respondent/Plaintiff

This Petition coming on this day for final hearing on 17.06.2026 before me in the presence of M/s. Shah and Shah, Dilip Kumar, learned counsels for the respondent/plaintiff ; of M/s. Lilly Francis and M.Chandru, learned counsel for petitioner/defendant and upon perusing the documents and hearing the arguments of

both sides and having stood over for consideration till this day, this court today delivers the following:

ORDER

1. The Petitioner/Defendant has come forward with this application under Order IX Rule 13 read with Section 151 of Code of Civil Procedure to set aside the ex parte decree dated 17.04.2025 with the following facts.

Upon receipt of summons, the defendant initiated amicable settlement discussion with the plaintiff to resolve the disputes out of Court. The Chennai counsel for defendant filed vakalath and made regular appearances before this Court in the initial stages of case. The defendant has not served complete set of suit documents including critical exhibits and annexure at the time of summons and complete documents were provided in parts only on 15.02.2025 through e-mail severely limiting defendant's ability to prepare a comprehensive written statement within the stipulated period under Commercial Courts Act.

The dispute involves transactions dating back 7 to 8 years necessitating thorough verification of historical records, delivery challans and correspondence with third parties such as Syntel and ICF and therefore additional time is required to file written statement and the time granted by this Court was insufficient. The reason for non appearance of defendant on subsequent hearing dates are miscommunication between Delhi Counsel and Chennai Counsel of defendant, personal difficulties of Chennai counsel and lack of notice. There was delay in delivery made by the plaintiff and there was unauthorised contact by the plaintiff with Syntel without privity of contract. The claim of plaintiff lacks verified statement of accounts or delivery

receipts. The defendant has a counter claim of Rs.64,18,262/-. The defendant's office is situated in Gurgaon which is a hindrance in attending the proceedings effectively. Ex parte decree violates Principles of natural justice by denying the defendant a fair opportunity to present its case. Without giving sufficient notice to the defendant, this Court proceeded with the case in the absence of defendant. The defendant is ready to file written statement immediately upon decree being set aside. A litigant should not suffer for advocate's fault and petition to set aside ex parte decree shall be liberally considered.

2. The Respondent/ Plaintiff has resisted this application with the following facts.

The defendant entered its appearance through counsel and was aware of all the proceedings at every stage. Even after lapse of 120 days, the defendant has not chosen to file written statement. Only after giving ample opportunity to the defendant, this Court passed ex parte decree considering the evidence of PW1 and Exhibits A1 to A9. The defendant cannot file written statement beyond 120 days. At the request of counsel for defendant, the counsel for plaintiff sent all the documents along with plaint through e-mail on 15.02.2025 in 3 parts. The documents could not be sent in a single e-mail owing to their large size. There was no settlement talks between the parties. It cannot claim to have initial settlement negotiation at one stage and refer to a counter claim in subsequent paragraph. The defendant being a corporate entity with adequate administration and legal machinery was under duty to supervise his litigation if there was any lapse on the part of the counsel. The defendant has not initiated any disciplinary steps against counsel. The counter claim

is an afterthought. The counter claim was not raised during pre institution mediation under Section 12A of Commercial Courts Act. The application has been filed beyond the period of 30 days. The petition is liable to be dismissed.

The point for consideration in this application is

3. Whether there is sufficient cause for setting aside the ex parte decree?

Heard both side.

4. The plaintiff has filed main suit for the relief of recovery of suit claim of Rs.27,08,166/- based on invoices, account statements and other documents. The defendant entered his appearance through his counsel on 03.01.2025 itself. This Court granted time for filing written statement up to 04.04.2025. Within 30 days from 03.01.2025, the defendant has not filed his written statement. The defendant can claim 30 days to file his written statement as a matter of right. After 30 days, the defendant must satisfy the Court that there is sufficient reason to extend time for filing written statement but not beyond 120 days. The defendant has not filed any application to extend time for filing written statement. Any way this Court has extended time from time to time up to 04.04.2025. Even after filing of proof affidavit of PW1, the defendant had not chosen to file his written statement. Therefore, this Court forfeited right of defendant to file written statement. Verification of e-filing portal shows that the defendant filed this application on 02.06.2025 immediately on reopening of Courts after summer vacation.

5. The suit was decreed in ex parte on 17.04.2025. He has filed this application within 30 days. He has not chosen to file his written statement even along with this application. Commercial Courts Act does not ordain the plaintiff to serve copy of documents on the defendant. Where suit is instituted under Order XXXVII for summary judgment, the plaintiff should serve copies of documents along with plaint on defendant. Where an ad interim injunction is granted by the Court, the plaintiff is bound to serve copy of petition and documents relied on by him. Where the plaintiff is directed to serve copies of documents in commercial suits, the plaintiff would face difficulties in serving large volume of commercial documents. That is why the Commercial Courts Act permits the parties to inspect the documents. For the convenience of the counsels, they have exchanged copies of documents through e-mails on understanding between them. The defendant can access the documents through e-filing portal. Therefore, after expiry of 120 days, the defendant cannot be permitted to file his written statement. The defendant can cross examine the witness only on the averments made in the plaint and not on defence.

6. The learned counsel for plaintiff relied on a decision rendered in C.R.P.No.4721 of 2025 and S.L.P No.17575 of 2023 to show that litigant should be vigilant in following the suit proceedings rather than depending on only advocate who is his mere agent for the litigant to render professional assistance. In the decision rendered in CDJ 2025 MHC 3381 in M/s. K.M. Plastics and others Vs M/s. Shah Trading Corporation, our Hon'ble High Court has permitted the defendant therein to cross examine the witness without filing written statement. The office of the defendant is

located in Gurgaon. It engaged a counsel in Chennai through its Delhi counsel. There is possibility of mis-communication between the counsels. The reason for non appearance of defendant on 04.04.2025 when the case was posted for cross examination of PW1 is sufficient. This Court deems fit to give an opportunity to petitioner to contest the suit without filing written statement.

In the result, this application will be allowed on payment of cost of Rs.5000/- by the petitioner to the respondent and Rs.5,000/- to the District Mediation Centre, Chennai on or before 20.07.2026 failing which application will stand dismissed. Call on 21.07.2026. Total cost Rs.10,000/-. It is made clear that the defendant is not permitted to file his written statement beyond 120 days and he can cross examine PW1 based on plaint averments.

Dictated by me to the Steno-Typist, Transcribed and typed by him in the computer, corrected and pronounced by me in the open court, this 29th day of June 2026.

GANAPATHI
SAMY

Digitally signed
by GANAPATHI
SAMY
Date: 2026.06.29
17:54:41 +0530

Principal Judge
Principal Commercial Court
Egmore, Chennai

Draft/ Fair Order in

I.A.No.3 of 2025

in

C.O.S.No. 214 /2024

Date: 29.06.2026

Principal Commercial Court,
Egmore, Chennai.