

A.No.2681 of 2016 in

C.S.No.902 of 2002

PUSHPA SATHYANARAYANA, J

This application has been filed by the applicant / defendant for condoning the delay of 2644 days in filing the written statement in the above said suit.

2. The suit is filed for recovery of a sum of Rs.1,32,26,808/- with interest as per the plaint averments. The defendant had borrowed the loan from the plaintiff and executed promissory notes in favour of the third parties.

3. According to the applicant / defendant-Company, they did not receive any summons in the suit and the plaintiff had resorted to paper publication for the purpose of completion of service. Though the defendant claimed to have entered appearance through their counsel, they had not filed written statement and he was set ex-parte on 07.03.2013 for non-filing of the written statement. It is further stated that the communication sent by the defendant's counsel also had not reached him. Only later on 20.11.2013, when the defendant was before the City Civil Court in connection with other proceedings, he met his advocate, it was informed them about the ex-parte order passed on 07.03.2013. Immediately, the defendant-Company has taken

steps to set aside the ex-parte order and prepared the written statement. The ex-parte order was set aside by this Court on 31.10.2014 in A.No.4469 of 2014 and was also confirmed in O.S.A.No.266 of 2014. Till such time the ex-parte order was set aside, the defendant could not file his written statement. Hence, the delay of 2644 days had crept in and the present application is filed under Section 5 of the Limitation Act to condone the same.

4. The learned counsel for the respondent / plaintiff resisted the application on the ground that Section 5 of the Limitation Act is not applicable for condoning the delay in filing the written statement. The next objection raised by the plaintiff is that the application should have been moved before the learned Master and not by way of Judge's summons. Hence, the application is not maintainable. Thirdly, it is stated that having gained knowledge about the suit and engaged a counsel, the defendant ought to have been prudent in prosecuting the case. The plaintiff also had traversed on the merits of the case for dismissing the application. According to the plaintiff, there is no acceptable and convincing reason given by the defendant and therefore, the application deserves dismissal.

5. Heard the learned counsel for the applicant / defendant and learned counsel for the respondent / plaintiff.

6. On the merits of the case, this Court had already dealt with the same while considering the Application No.4469 of 2014, which was also confirmed by the Hon'ble Division Bench in O.S.A.No.266 of 2014. As the affidavit filed in both the applications is common and the merits also have been dealt with already by the Hon'ble Division Bench, this Court cannot sit over the same. So far as the maintainability of the case is concerned, it is submitted by the respondent / plaintiff that extension of time beyond 90 days of service of summons must be granted by the Courts only on the basis of clear satisfaction and justification. The grant of extension of time beyond the period prescribed, should be exercised with caution and for adequate reasons which should be based on convincing reasons.

7. In this regard, the learned counsel for the applicant/defendant placed his reliance on the decision of the Hon'ble Supreme Court reported in **2005 (2) SCC 145 [IRIDIUM INDIA TELECOM LTD - VS- MOTOROLA INC]**, in which, the powers of the Chartered High Court are discussed. The above decision specifically mentions that the limitation period prescribed under Order VIII Rule 1 Code C.P.C for filing written statement, is not applicable to suits on the Original Side of the chartered High Court, as they are governed by the High Court Original Side Rules.

8. The Letters Patent is the charter under which the High Court is established. The powers given to a High Court under the Letters Patent are akin to the constitutional powers of a High Court. Clause 37 of the Letters Patent deals with the regulation of proceedings. It is also a settled proposition of law that Letters Patent cannot be excluded by implication. If there is any conflict between the Letters Patent and the Civil Procedure Code, then the provisions of the Letters Patent would always prevail. The Original Side Rules of the High Court are framed under Clause 37 of the Letters Patent. Therefore, the Original Side Rules prevail over the provisions of the Civil Procedure Code, in case of conflict. Order VIII Rule 1 of C.P.C mandates the defendant to file written statement within thirty days from the date of service of summons on him. In case of default, the defendant can be allowed to file the written statement on any other day, not exceeding ninety days, by recording reasons for the same.

9. Order V Rule 1 of the Madras High Court Original Side Rules 1994 states that if the defendant intends to defend the suit, he shall, within the period limited by the summons served on him, file in Court a written statement setting out the grounds of his defence.

10. From the above, it is clear that the period limited by the summons is only the period fixed by the High Court. Order V Rule 5 also prescribes that an extension of time exceeding six weeks from the date on which the written statement was originally due to be filed is possible, by taking out a Master summons. So, it is thus seen that there is no rigid time limit for filing the written statement, and discretion is given to the Court to suitably cause to extend the time, for filing the written statement.

11. As the Letters Patent is the special law for the concerned High Court, in the event of conflict between the Special law and General Law, Special Law must always prevail. Section 4 of the C.P.C also provides that nothing in the Code shall limit or otherwise affect any special law. Therefore, the objections raised by the learned counsel for the respondent/plaintiff about the maintainability of the application under Section 5 is only to be rejected. As the application under Order IX Rule 9 been allowed by this Court on the above reasons, this Court is also inclined to condone the delay accepting the reasons stated in the affidavit. However, considering the hardship caused to the respondent / plaintiff, due to the attitude of the defendant, he should be sufficiently compensated, atleast monitorily.

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12. For the reasons stated above, the application will be allowed on payment of Rs.25,000/- (Rupees twenty five thousand only) by the applicant / defendant payable to the Madras High Court Legal Services Authority, within a period of two weeks from the date of receipt of copy of this order, failing which, the same shall stand dismissed. Post the matter for compliance thereafter.

20.07.2016

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