

APPLICATION NO.2824 OF 2016
IN
C.S.NO.335 OF 1998

PUSHPA SATHYANARAYANA, J.

This application is to condone the delay of 6367 days in filing the written statement by the defendants 1 to 3, 5 and 6 in C.S.No.335 of 1998.

2. The Civil Suit is for recovery of money. The plaintiff Fund itself is being managed by the Administrator appointed by this Court. The defendants 1, 2 and 6 were served as early as on 08.03.2002. The defendants 3 and 5 were served on 18.06.1998 itself. The fourth defendant was served by substituted service and though the service was completed by 18.12.2015, he was set exparte on 15.03.2016. Despite service of notice at the earliest point of time, as mentioned above, the defendants 1, 2, 3, 5 and 6 have taken more than 17 years to file their written statement.

3. The reason given as per the affidavit filed in support of this application is that they were trying to settle the matter with the Commissioner Honourable Mr.Justice S.Padmanabhan. But the said reason may not be

acceptable, as the Commissioner himself is no longer alive. Therefore, the reason mentioned in the affidavit is not acceptable in normal circumstances.

4. The Honourable Supreme Court has reiterated that a liberal pragmatic and justice oriented approach should be given in dealing with the application for condonation of delay. It is the substantial justice which is paramount and pivotal that the technical considerations should not be given unnecessary emphasis. Of course, lack of *bona fides* imputable to a party seeking condonation of delay is relevant and significant fact.

5. In the case on hand, it is certainly mischievous of the defendants not to file the written statement within time and dragged on the proceedings for more than 18 years. The inordinate delay on the side of the defendants certainly would prejudice the interest of the plaintiff. The conduct, behaviour and attitude of the party relating to its inaction or negligence are relevant facts to be taken into consideration. Though the explanation offered in the affidavit is not concocted, but the delay is not properly explained.

6. Considering the fact that the plaintiff itself is administered by a Commissioner appointed by this Court and the plaintiff is only keen in recovery

of money, the defendants may be given an opportunity to contest the claim. The defendants have been not serious about the filing of the written statement within time and they have been exhibiting their lethargy in the same.

7. It is contended by the learned counsel for the plaintiff that if the written statement is allowed to be taken on file, after this length of time, the plaintiff would be put to serious prejudice. However, in this case, notice with respect to the fourth defendant was completed only recently. The issues are yet to be framed. In such circumstances, the plaintiff has to be compensated for the prejudice and hardship that it may be put to in receiving the written statement at the belated stage.

8. This Court is of the view that the condonation of delay may be ordered on the following conditions : -

(i) The defendants 1, 2, 3, 5 and 6 shall pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as costs, to the plaintiff within a period of four weeks from the date of receipt of a copy of this order.

(ii) The applicants are directed to deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) being a portion of the suit claim to the credit of C.S.No.335 of 1998 within a period of eight weeks from the date of receipt of a copy of this order.

9. On compliance of the above, the delay will be condoned and the written statement will be taken on file.

10. Post this matter for reporting compliance on 29.08.2016.

27.06.2016

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