IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 31ST DAY OF JULY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. Nos.1501 to 1503 of 2018
in
C.S. No.550 of 2016

M/s.ISS SDB Security Services Private Ltd.,
Represented by its Asst.,
General Manager, (Credit Control)
Mr.Martin Chacko,
No.5, Venkatnarayana Road, V Floor,
T.Nagar, Chennai 600 017.

... Plaintiff

-Versus-

M/s.Saint Gobain India Private Limited,
(Formerly Saint Gobain Glass India Ltd.,)
Reg.Office: Sigapi Achi Building, Level-7,
No.18/3, Rukmini Lakshmipathi Road,
Egmore, Chennai 600 008.

... Defendant

A.No.6028 of 2016
and
A.Nos.1501 to 1503 of 2018

M/s.Saint Gobain India Private Limited,
(Formerly Saint Gobain Glass India Ltd.,)
Reg.Office: Sigapi Achi Building, Level-7,
No.18/3, Rukmini Lakshmipathi Road,
Egmore, Chennai 600 008.

..Applicant/Defendant

VS

M/s.ISS SDB Security Services Private Ltd.,
Represented by its Asst.,
General Manager, (Credit Control)
Mr.Martin Chacko,
No.5, Venkatnarayana Road, V Floor,
T.Nagar, Chennai 600 017.

....Respondent/Plaintiff

A.No.1501 of 2018

Application praying that this Hon'ble Court be pleased to set aside the order of the Learned Master dated 13.10.2017 made in Application No.6028 of 2016 in C.S.No.550 of 2016 and grant unconditional leave to the defend the suit in C.S.No.550 of 2016.

A.No.1502 of 2018

Application praying that this Hon'ble Court be pleased to set aside the Order and Decree of the Learned Master dated 06.12.2017 made in Application No.6028 of 2016 in C.S.No.550 of 2016 and grant unconditional leave to the defend the suit in C.S.No.550 of 2016.

A.No.1503 of 2018

Application praying that this Hon'ble Court be pleased to stay all further operation of the order of the learned Master dated 13.10.2017 made in Application No.6028 of 2016 in C.S.No.550 of 2016 pending disposal of the above appeal/application.

These applications coming on this day before this court for hearing the court made the following order:

These applications have been filed by the Defendant in the suit in CS.No.550 of 2016

2. The suit had been filed by the Plaintiff, M/s.ISS SDB Security Services Private Limited, as a summary suit, under Order 37 Rule 2 of CPC read with Order VII Rule 1 of the Original Side Rules, seeking a judgement and decree, against the Defendant for a sum of Rs.1,08,87,791/-, together with interest at the rate of 24% p.a. from the date of the plaint till the date of realisation and also for costs of the suit.

3. The Plaintiff is a Company, registered under the Companies Act, 1956. They provide security services.

The Plaintiff claims that they are one of the leading security service agencies in India. They employ security personnel and provide services to various companies all over India. The Defendant, M/s.Saint Gobain India Private Limited (formerly Saint Gobain Glass India Limited), is also a Company registered under the Companies Act, 1956 and they approached the Plaintiff to provide security services by deploying security personnel in their office/factory premises. The Plaintiff agreed to provide such services. An agreement dated 1.8.2008 was entered into between the Plaintiff and the Defendant. The Plaintiff had to provide security services at the office/factory premises of the Defendant at (i) SIPCOT Industrial Park, Sriperumbudur, Kancheepuram District, (ii) Dolomite Plant, SIPCOT Industrial Park, Sriperumbudur, Kancheepuram District and (iii) Sand Benefication Plant at Karur Village, Tada, Nellore District.

4. According to the said agreement, the Plaintiff had to depute a total of 126 security personnel as per the strength given below:-

Location	Inspector	Supervisor	Guard	General Shift	Total
Float 1	2	6	36	2	46
Float 2	0	3	31	0	34
Sekurit	2	3	17	1	23
Dolomite	0	3	3	0	6
MD'S Res	0	0	2	0	2
TADA	0	3	12	0	15
Total	4	18	101	3	126

5. In the Plaint, it has been stated that one John Kurian was the Chief Security Officer in the Defendant Company. He was placed in charge with respect to deployment of the security staff at various locations. The

security staff would have to report to him and he would give directions for their day today work in accordance with the requirement of the Defendant Company. The Plaintiff had an obligation to submit the attendance register, monthly invoices/bills with him and he was under obligation to approve the said bills/invoices, after verifying with the attendance register maintained by the Defendant. This process had been continuing for quite some time and there was no cause for any grievance by the Plaintiff.

6. During October 2010, a fresh agreement was entered into between the parties on 01.10.2010. By this agreement, the number of personnel, which was 126, was reduced to 82. According to the Plaintiff, this reduction in the security staff prevented the Defendant from allocating guards to all areas in the factory and this was also communicated to the John Kurian, the Chief Security Officer. He orally instructed the Plaintiff to deploy 6 additional personnel. According to the Plaintiff, clause (d) of the agreement provides that the Plaintiff has to provide additional staff as and when required to safeguard the company's property during any disturbance including strike, riot or any other situation, at additional costs subject to approval of the authorized person of the Company. Since the request came directly from the Chief Security Officer, the Plaintiff deployed six additional personnel over and above 82 personnel, who were deployed in accordance with the agreement, dated 01.10.2010.

7. The monthly bills were raised by the Plaintiff for the six persons also and these bills were also cleared without any protest. It is the claim of the Plaintiff that consequently, deployment of six persons was validated by the Defendant. However, from March 2015 onwards, the Defendant started to commit default in payment of the monthly bills. The Plaintiff, therefore, started negotiation with the Defendant to review the service contract. The Defendant issued a letter dated 28.11.2015,

calling upon the Plaintiff to furnish the particulars of the guards, who were additionally deployed and who continued to be deployed till October 2015. The Plaintiff withdrew its services from 31.10.2015.

8. According to the Plaintiff, the Defendant claimed that there were discrepancies in the bills raised and the Defendant further claimed that excess billing for six persons were detected during internal audit. The Plaintiff stated in the plaint that these six persons were deployed only under the oral instructions of the Chief Security Officer, John Kurian. On 28.11.2015, the Defendant wrote a letter, calling upon the Plaintiff to produce the actual particulars of the guards who were deployed. It is the claim of the Plaintiff that the Defendant had raised this issue with a motive to terminate the contract. The Defendant had made a part payment of Rs.49 lakhs on 08.09.2015. The Defendant assured that the full and final payment would be paid by the end of October. However, on the date when the Plaintiff withdrew services, namely on 31.10.2015, the Plaintiff claimed that the Defendant was liable to pay a sum of Rs.97,21,242/-.

9. The Plaintiff further claimed that they made several visits to the Defendant, seeking to settle the bills. It has been stated that the Plaintiff was bound to pay wages under the Minimum Wages Act, to all the guards, whom they deployed. The Plaintiff issued a notice to the Defendant on 2.2.2016, demanding the outstanding dues. A reply was sent by the Defendant on 21.04.2016, disclaiming liability to make the payment. It is under these circumstances that the Plaintiff had filed the suit, seeking the reliefs as stated above.

10. The Plaintiff instituted the suit under Order 37 Rule 2 of CPC read with Order VII Rule 1 of the Original Side Rules. This suit had been instituted before the formation of the Commercial Division of the High Court of Madras. Consequently, the suit came to be considered by the

Master under Order 7 of the Original Side Rules. Time limit was stipulated, within which, the Defendant should file the application for leave to defend either with or without security. Those applications also came to be considered by the Master. Before the Master, the Defendant filed A.No.6028 of 2016, seeking, unconditional leave to Defendant the suit.

11. In the application, seeking leave to defend, the Defendant stated that it was a fact that the Plaintiff was engaged to provide security services and it was a fact that an agreement was entered into between the Plaintiff and the Defendant on 11.10.2008. The agreement was for a period of two years. According to the agreement, 124 personnel were to be deployed by the Plaintiff and two security guards were to be deployed at the leased premises at Kotturpuram. The Plaintiff was required to comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. This required the Plaintiff to maintain attendance register, wages register and over time register. The deployment register was also to be maintained, giving the names of each individual personnel and the places where they were deployed. The monthly bills were to be raised by the Plaintiff in accordance with the number of personnel they deploy. The Defendant claimed that in October 2010, they installed electronic surveillance system in the factory and the number of security was reduced to 82. A fresh agreement was entered into on 2.5.2012. The number of personnel was reduced to 82. The Plaintiff's invoices were raised in the registered office at Sriperumbudur and tendered at Sriperumbudur. They were merely forwarded by the security consultant. They were processed by the Human Resource Department. Placing implicit trust and confidence in the invoices raised, the bills were processed by the Accounts Department and cheques were issued and payments were transferred to the bank account from Sriperumbudur. The Defendant also

stated that security consultant by name John Kurian had been employed. He had no authority to seek additional personnel over and above the number of personnel, who were to be deployed under the agreement. It was stated that in February 2015, the Officials of the Defendant noticed escalation in the cost of the security deployed. They made enquiries and found that the bills had been raised for six additional personnel as if they were employed at the glass plant at Sriperumbudur. In the affidavit, it has been categorically stated that no such personnel were ever deployed. It was further stated that this was also confirmed in August and September 2015 during the internal audit of the Defendant Company. The extra amount already paid by the Defendant was between Rs.1.6 lakhs and Rs.1.9 lakhs per month.

12. The Plaintiff was called upon to produce the documents and the details regarding the employment of the security personnel, including the appointment orders. However, the Plaintiff did not have any records. There were several communications between the Officials of the Plaintiff and the Defendant. Thereafter, the Defendant paid a sum of Rs.49 lakhs on the understanding that the Plaintiff will cooperate in the internal audit of the Defendant. The internal audit found that the Plaintiff had inflated the bills in collusion with the security consultant. Six persons were paid additional amount from the year 2009. There were also charges made for illegal over time. It was stated that this was done with the collusion with the security consultant.

13. It had been claimed that the Plaintiff had been paid an excess amount of Rs.98,05,830/- during the period. A letter was issued by the Defendant, dated 28.11.2015, calling upon the Plaintiff to furnish particulars of the security personnel. The Plaintiff sent a letter, seeking confirmation of the balance of Rs.1,05,38,136/- as on 18.11.2015. The Defendant sent a

letter dated 12.12.2015, denying any amount was due. On the other hand, they claimed a sum of Rs.24,18,166/- from the Plaintiff.

14. Thereafter, the Plaintiff sent an advocate notice, dated 02.02.2016. A reply, dated 21.4.2016 was also sent. It has been stated that there are discrepancies in the amounts claimed by the Plaintiff and also in the amounts claimed to be outstanding. It has also been stated that there was no subsisting contract between the Plaintiff and the Defendant. The contract which was in existence provided only for deployment of security personnel. The Plaintiff should produce the attendance register and substantiate the claim made by them. The Defendant claimed that they are not liable for any amount. There was also no written contract to provide additional personnel. It has been specifically stated that additional personnel were deployed in the residence of the security consultant as drivers, cooks, etc. The Defendant claimed a sum of Rs.24,18,166/- from the Plaintiff. It is under these circumstances that the Defendant sought leave to defend the suit.

15. This application came up for consideration before the Master. The Master by the order under challenge on 13.10.2017 had held that the Chief Security Officer, John Kurian had been appointed only by the Defendant and if it had been alleged that he had misused his official position or caused financial loss to the Defendant, then the Defendant should have initiated appropriate civil and criminal action against him. The Master did not accept the contention that removal from service was a sufficient punishment imposed on John Kurian. Consequently, the Master stated that there was a reasonable doubt on the attitude of the Defendant. The Master further observed that the Plaintiff Company had offered valuable services and the bills raised had been approved for payment. The Master rejected the contention of the Defendant regarding

findings of the internal audit and the claim that the Plaintiff owed a sum of Rs.24 lakhs to the Defendant.

16. The Master relied on **2015 10 SCC 521 (State Bank of Hyderabad Vs. Rabo Bank)** that if the defence is illusory or moonshine, then unconditional leave to defend cannot be granted. The Master held that the stand of the Defendant is illusory and sham. Consequently, holding that there are no triable issues involved in the suit, the application to leave to defend the suit was not maintainable and accordingly, was dismissed.

17. The present applications have been filed, challenging the orders of the Master. In the mean while, on 6.12.2017, the Master again perused the documents of the Plaintiff and holding that the Plaintiff Company had rendered security services to the Defendant, but had not been paid the agreed amount, according to the agreement and that the documents establish that the outstanding bill amount of Rs.97,21,242/- is pending by the Defendant, decreed the suit, directing the Defendant to pay a sum of Rs.1,08,87,791/- together with interest at 24% p.a. from the date of the plaint till the date of real and also with costs of the suit.

18. A.No.1501 of 2018 had been filed, challenging the order of the Master made in A.No.6028 of 2016, dated 13.10.2017. A.No.1502 of 2018 had been filed, challenging the order of the Master dated 6.12.2017, decreeing the suit with costs. A.No.1503 of 2018 had been filed, seeking stay of all further proceedings pursuant to the order of the Master, dated 13.10.2017 in A.No.6028 of 2016 in CS.No.550 of 2016.

19. In the grounds challenging the order of the Master, it has been stated that the Master should have examined whether the Defendant had raised triable issues. It has been further stated that in this case, the Defendant had raised an issue of territorial jurisdiction of this Court, maintainability of the summary suit on the ground of

expiry of the contract and consequently, liquidated damages should not have been claimed and that the claim of the Plaintiff has been challenged on facts by the Defendant on the ground that the claim was made for six persons who were not deputed and there was over charging in the bills. It has been stated that the Defendant had also raised a claim against the Plaintiff. It has been stated that there were triable issues in the suit and consequently, the applications seeking leave to defend should have been allowed and that the Master had gravely erred in passing the orders under challenge in these applications.

20. This Court heard Mr.M.S.Krishnan, the learned senior counsel for Mr.T.S.Gopalan and Company, the learned counsel for the Applicant in A.Nos.1501 to 1503 of 2018 and Mr.K.Mahalingam, the learned counsel for the Respondent. The Applicant is the Defendant in the suit and the Respondent is the Plaintiff. For the sake of convenience, the parties herein after shall be referred to as the Plaintiff and the Defendant.

21. The Plaintiff in CS.No.550 of 2016 had been filed, seeking a judgement and decree, against the Defendant for a sum of Rs.1,08,87,791/- together with interest at the rate of 24% p.a. from the date of the plaint till the date of realisation and also for costs of the suit.

22. The claim of the Plaintiff is based on the fact that they provided security service personnel and the Defendant had approached the Plaintiff to provided security personnel at their office/ factory premises. Accordingly, an agreement had been entered into on 1.8.2008. At that particular point of time, the total number of security personnel provided was 126. In the Defendant Company, John Kurian worked as Chief Security Officer. He was in charge of security staff deployed by the Plaintiff. The Plaintiff would have to submit the attendance register and the monthly invoices/ bills to him and he should approve the

bills/invoices of the Plaintiff after verifying the attendance register.

23. It is the claim of the Plaintiff that from 2008 onwards, they had been providing services without any blemish. Thereafter, a fresh agreement was entered into on 1.10.2010 and the number of security personnel was reduced from 126 to 82. It has been further stated that they were not able to do the work to the expectation of the Defendant and consequently, John Kurian requested the Plaintiff to depute six additional personnel. They were also provided. The Plaintiff raised bills for the six additional security guards. The monthly bills raised by the Plaintiff were approved by John Kurian and the bills were also cleared for payment. However, there was default in clearing the bills from March 2015 onwards.

24. There were communications between the officials of the Plaintiff and the Defendant. The Defendant by letter dated 28.11.2015, called upon the Plaintiff to furnish the particulars of the guards who were additionally deployed. According to the Defendant, they found discrepancies in the bill which were found during the internal audit. The Plaintiff claimed that the Chief Security Officer, John Kurian knew about the additional deployment of the six security guards. They had been deployed only under his instructions. The Defendant then terminated the contract. Thereafter, the Defendant made a part payment of R.49 lakhs on 8.9.2015. The Plaintiff claimed that as on 31.10.2015, a sum of Rs.7,21,242/- was payable by the Defendant. Claiming the said amount, the suit had been filed further claiming interest and costs.

25. In the application leave to defend in A.No.6028 of 2017, the Defendant had claimed that six persons who have been additionally deployed, were actually not deployed. They further claimed that the Plaintiff had, in collusion with John Kurian, had raised bills for six persons who were never employed. The agreement entered into

in the year 2010 stipulated that the Plaintiff should provide 82 personnel. However, they had claimed bills for six additional personnel when there was no written agreement. There was an extra billing of Rs.1,60,000/- and Rs.1,90,000/- per month. It has been stated that the deployment register showed engagement of six persons, but it did not show the actual place within the factory where they were deployed. The Defendant called upon the Plaintiff to produce the details of the employment of these six persons. The Plaintiff claimed that they do not have any records. However, in view of the long service rendered by the Plaintiff, the Defendant made a part payment of Rs.49 lakhs on the understanding that the Plaintiff would cooperate in the internal audit. Subsequently, John Kurian had also been dismissed from service. The Defendant claimed that the Plaintiff had to pay a further sum of Rs.24,18,166/- owing to the extra billing. It was claimed that thereafter leave to defend the suit must be granted since triable issues had been raised.

26. The Master refused to grant leave to defend primarily on the ground that the Defendant had not initiated any civil or criminal proceedings against the said John Kurian. The Master was not satisfied with the fact that he was dismissed from service. The Master finally stated that the defence raised by the Defendant were illusory and sham and consequently, leave to defend was not granted and subsequently, the suit was also decreed with costs.

27. The only question now to be considered is whether the Defendant should be granted an opportunity to defend the suit in manner known to law or whether the defence raised by them would have to be categorised as sham and illusory. This would revolve around the fact that whether there are triable issues in the suit.

28. In **AIR 1958 SC 321 (Santosh Kumar Vs. Bhai Mool Singh),** the Constitutional Bench of the Honourable

Supreme Court examined the provisions of Order 37 of CPC. In paragraphs 6, 7 and 8, it was stated as follows:-

> “”At first blush, 0. XXXVII, R. 2(2), appears drastically to curtail a litigant's normal rights in a Court of justice, namely to appear and defend himself as of right, if and when sued, because it says that when a suit is instituted on a bill of exchange, hundi or a promissory note under the provisions of sub-rule (1)
>
> "..... the defendant shall not appear or defend the suit unless he obtains leave from a judge as hereinafter provided so to appear and defend."
>
> But the rigour of that is softened by r. 3(1) which makes it obligatory on the Court to grant leave when the conditions set out there are fulfilled. Clause (1) runs-
>
> " The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application."
>
> But no sooner is the wide discretion given to the Court in r. 2(2) narrowed down by r. 3(1) than it is again enlarged in another direction by r. 3(2) which says that
>
> " Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording

issues or otherwise as the Court thinks fit."

7. .... All that we need say about them is that if the Court is of opinion that the defence is not bona fide, then it can impose conditions and is not tied down to refusing leave to defend. But it cannot reach the conclusion that the defence is not bona fide arbitrarily. It is as much bound by judicial rules and judicial procedure in reaching a conclusion of this kind as in any other matter. It is unnecessary to examine the facts of those cases because they are not in appeal before us. We are only concerned with the principle.

8. It is always undesirable, and indeed impossible, to lay down hard and fast rules in matters that affect discretion. But it is necessary to understand the reason for a special procedure of this kind in order that the discretion may be properly exercised. Taken by and large, the object is to see that the defendant does not unnecessarily prolong the litigation and prevent the plaintiff from obtaining an early decree by raising untenable and frivolous defences in a class of cases where speedy decisions are desirable in the interests of trade and commerce. In general, therefore, the test is to see whether the defence raises a real issue and not a sham one, in the sense that, if the facts alleged by the defendant are established, there would be a good, or even a plausible, defence on those facts."

29. It must be stated that the stage of proof can only come after the Defendant has been allowed to enter an

appearance and defend the suit and that the nature of the defence has to be determined at the time when the affidavit is put in. At that stage all that the Court has to determine is whether " if the facts alleged by the defendant are duly proved " they will afford a good, or even a plausible, answer to the plaintiff's claim. Once the Court is satisfied about that, leave cannot be withheld and no question about imposing conditions can arise; and once leave is granted, the normal procedure of a suit, so far as evidence and proof go, obtains. The power to impose conditions is only there to ensure that there will be a speedy trial. If there is reason to believe that the defendant is trying to prolong the litigation and evade a speedy trial, then conditions can be imposed. But that conclusion cannot be reached simply because the defendant does not adduce his evidence even before he is told that he may defend the action.

30. In **2015 10 SCC 521 (State Bank of Hyderabad Vs. Rabo Bank)** , which was relied on by the Master, the following propositions had been laid down while deciding an application to leave to defend:-

1. "If the defendant satisfies the Court that he has a good defence to the claim on its merits, the plaintiff is not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend.

2. If the defendant raised a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

3. If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately made it clear that he has a defence, yet, shows such a stage of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff`s claim, the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

4. If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
5. If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

31. An analysis of the above principles makes it clear that in cases where the defendant has raised a

triable issue or a reasonable defence, the defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the defendant upon disclosing a fact, makes a positive impression that at the trial the defence would be established to the plaintiffs claim. Only in the cases where the defence set up is illusory or sham or practically moonshine, the plaintiff is entitled to leave to sign judgment.

32. In the present case, the claim of the Plaintiff can be proved only with additional evidence in support of the claims by John Kurian, who is said to have orally granted permission for deployment of six additional personnel. The reasoning of the Master that the Defendant had not initiated civil or criminal proceedings against John Kurian is rejected by me. They had dismissed him from service. That is also a form of disciplinary proceedings. The claim of the Plaintiff will necessarily have to be proved in manner known to law. The registers of both the Plaintiff and the Defendant will have to be cross checked to find out whether six personnel were actually deployed. Results of internal audit will have to be examined. Each bill will have to be scrutinised to find out and compare with the attendance register to determine whether the six additional persons were actually employed. There are triable issues. The defence raised by the Defendant cannot be brushed aside as illusory or sham. As a matter of fact,, the agreement between the two parties has run its course and it is no longer in subsistence.

33. Each aspect raised by the Plaintiff will have to be proved in manner known to law. There is a responsibility cast on the Plaintiff to establish the details of the six persons who were employed, the places where they were employed, the permission granted for deploying them and the period in which they worked. The Plaintiff also have to explain why they did not get any written consent from John Kurian or from any other

Official. It has also been very specifically stated by the Defendant that the six persons were employed as cooks/drivers, etc. in the residence of John Kurian. Naturally, the entire suit revolves also around the evidence of John Kurian. When the claim of the Plaintiff is dependent on oral evidence, naturally, leave to defend the suit has to be granted and the Defendant will have to be given an opportunity to cross examine the said oral evidence.

34. Viewed from this angle, I hold that the orders of the Master will have to be necessarily interfered with. The learned counsel for the Plaintiff has stated that condition must be imposed on the Defendant before they could defend the suit. However, the Constitutional Bench in **AIR 1958 SC 321 (Santosh Kumar Vs. Bhai Mool Singh)** referred to above had stated that condition can be imposed only to ensure speedy trial.

35. The jurisdiction has already been determined to examine the issues by the commercial division of this Court. The Commercial Courts Act is a special Act in itself and regulates the proceedings of this Court. Consequently, holding that the Defendant shall be called upon to file its written statement and participate in the trial without seeking any unnecessary adjournment, I hold that the orders of the Master must be set aside.

36. In the result, these applications are allowed, as prayed for. No costs. The Defendant shall file its written statement on or before 23.08.2018.

Sd/.C.V.K.J
20.07.2018

//Certified to be a true copy//
Dated this the day of 2018.

KY/31.07.2018 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.