

O.A.No. 502 of 2018
And
A.Nos. 4609 & 4999 of 2018

C.V.KARTHIKEYAN, J.

On 13.08.2018, this Court had examined O.A.No. 502 of 2018 and A.Nos. 4609 & 4999 of 2018. Finally after discussing the various facts surrounding the rival claims, O.A.No. 502 of 2018 was allowed and A.Nos. 4609 & 4999 of 2018 were dismissed.

2. It is to be pointed out that O.A.No. 502 of 2018 had been filed by the plaintiff. A.No. 4609 of 2018 had been filed by the first defendant. A.No. 4999 of 2018 had been filed by 14th defendant. This order was taken up in appeal by the first defendant in O.S.A.No. 7 of 2019. The Division Bench by order dated 08.11.2019 had thought it fit to interfere with the order passed by this Court and had also given liberty to the plaintiff to file additional documents and also passed a direction that the Single Judge should dispose the suit within the specified time frame as given in the case management applicable to commercial disputes under the Commercial Dispute Act 2015.

3. A perusal of the array of defendants in the plaint show that as on date, counsel had entered appearance on behalf of the first defendant and on behalf of the 14th defendant. The plaintiff had made an endorsement that they are giving up the 5th, 6th and 13th defendants and this was recorded on 13.07.2018 and the suit was dismissed as against those defendants. Later, the learned counsel for the plaintiff also made a similar request with respect to the 7th, 8th, 9th, 10th and 11th defendants and the suit was also dismissed as against those defendants on 01.11.2019.

4. Whether the suit summons had been served on the 2nd, 3rd, 4th and 12th defendants is unclear. Though the learned counsel had entered appearance on behalf of the 14th defendant, it is also unclear whether the 14th defendant had been served with suit summon or alternatively even if not served, whether the plaintiff had taken advantage of Order IV Rule 7(3) of the Original Side Rules to serve the learned counsel who had entered appearance on behalf of the 14th defendant have to be clarified.

5. Today O.A.No. 502 of 2018 and A.No. 603 of 2018 have been listed for consideration.

6. A.No. 603 of 2018 had been filed by the first defendant seeking an order restraining the plaintiff from publishing the earlier order granted by this Court granting an interim injunction in favour of the plaintiff.

7. The scope of this application is beyond the pleadings of the case and the issues which would narrow down to determine the lis between the parties.

8. It is also seen that by order dated 16.10.2019 a learned Single Judge of this Court had noted that the first defendant had not filed the written statement even beyond the period of 120 days as prescribed under the Commercial Courts Act 2015 and therefore had set aside the ex-parte. It is understood that the first defendant has filed an application seeking interference of the said order and also seeking the relief to accept the written statement filed by the first defendant. That application is still pending with the Registry for good reason namely that the Registry.

9. Heard Mrs.Subhashiny, learned counsel for the plaintiff and Ms. Nalina Mayagowda, learned counsel for the first defendant and Mr. R.S.Diwakaran, learned counsel for the 14th defendant.

10. It is only with good reason that the Division Bench had directed that the suit itself should be taken up for trial and disposed of within a specific time period. It must also be noted that taking advantage of the directions given by the Division Bench, the plaintiff has filed additional documents and permission had also been granted by this Court to accept the same.

11. The learned counsel for the plaintiff will now have to get instructions, whether the suit is to proceed further with respect to either taking fresh summons to the 2nd, 3rd, 4th and 12th defendants and also to serve summons under Order IV Rule 7(3) of the Original Side Rules on the learned counsel who had entered appearance on behalf of the 14th defendant or take instructions to give those defendants and proceed further with trial as against the first defendant. Since, the first defendant had forfeited their right to file the written statement, they cannot put up any new plea as against the case of the plaintiff.

12. The scope of Commercial Courts Act 2015 is to impress upon the defendant that if the written statement is not filed within the specific time period, namely, 30 days from the date of receipt of summons under Order V Rule 1 CPC and with an additional 90 days period for which necessary explanation will have to be given and for which delay the Court can also impose cost, then to declare that the defendant had forfeited their right to file the written statement.

13. The learned counsel for the first defendant, may therefore suitably amend the application which they have now filed and which is pending with the Registry and bring it up for consideration before the Court. The learned counsel for the plaintiff may also obtain the instructions with respect to issuance of suit summons on the 2nd, 3rd, 4th, 12th and 14th defendants. The Court shall take up further issues regarding progress of the trial depending on the application being brought up by the first defendant and by the instructions being informed by the learned counsel for the plaintiff to the Court.

14. Call the matter again on 23.02.2021.

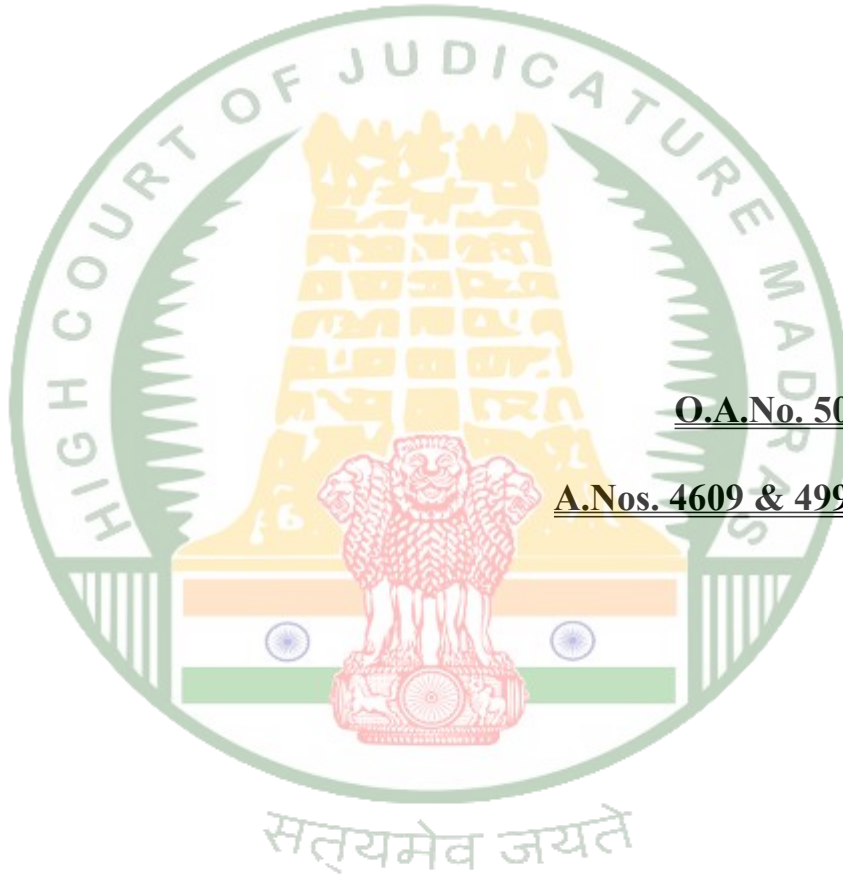
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15/02/2021

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