

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19TH DAY OF MARCH 2018

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

A.Nos.7214 & 7215 of 2017
in
A.SR.Nos.27467 of 2017 & 27345 of 2016
in
A.Nos.3985 & 4406 of 2016
in
C.S.No.341 of 2016

C.S.No.341 of 2016 :

Jeyakanthan,
S/o Ayyamperumal,
J.K.S.Enterprises,
No.6/1 Bharathi Apartment,
1st Floor, Bharathi Nagar 3rd Street,
North Usman Road, T.Nagar,
Chennai 600 017

..Plaintiff

Vs.

- 1.Tristar Accomadations Ltd.,
Rep.by its Director,
Mrs.Padmini Rajan,
No.657, Avinashi Road,
Coimbatore 641 037
- 2.Mrs.Padmini Rajan,
Director, Tristar Accomadations Ltd.,
No.131, Race Course Road,
Coimbatore 641 018
- 3.Mrs.Reshmi Rajan,
Director, Tristar Accomadations Ltd.,
No.657, Avinashi Road,
Coimbatore 641 037
- 4.Mr.M.Ramakrishnan,
Director, Tristar Accomadations Ltd.,
Flat No.5, Mithula Apartments,
Ram Nagar,
Coimbatore 641 009
- 5.Uma Rajan,
W/o Naren Rajan,
No.657, Avinashi Road,
Coimbatore 641 037

..Defendants

A.No.3985 of 2016 :

Jeyakanthan,
 S/o Ayyamperumal,
 J.K.S.Enterprises,
 No.6/1 Bharathi Apartment,
 1st Floor, Bharathi Nagar 3rd Street,
 North Usman Road, T.Nagar,
 Chennai 600 017

..Applicant/Plaintiff

Vs.

- 1.Tristar Accomadations Ltd.,
 Rep.by its Director,
 Mrs.Padmini Rajan,
 No.657, Avinashi Road,
 Coimbatore 641 037
- 2.Mrs.Padmini Rajan,
 Director, Tristar Accomadations Ltd.,
 No.131, Race Course Road,
 Coimbatore 641 018
- 3.Mrs.Reshmi Rajan,
 Director, Tristar Accomadations Ltd.,
 No.657, Avinashi Road,
 Coimbatore 641 037
- 4.Mr.M.Ramakrishnan,
 Director, Tristar Accomadations Ltd.,
 Flat No.5, Mithula Apartments,
 Ram Nagar,
 Coimbatore 641 009
- 5.Uma Rajan,
 W/o Naren Rajan,
 No.657, Avinashi Road,
 Coimbatore 641 037

..Respondents/Defendants

Application praying that this Hon'ble Court be pleased to pass a judgment and decree in this case by treating that the defendants 1 to 3 and 5 has no case to defend their cause and pass such further or other orders and judgment till the disposal of the suit.

A.No.4406 of 2016 :

- 1.Tristar Accomadations Ltd.,
 Rep.by its Director,
 Mrs.Padmini Rajan,
 No.657, Avinashi Road,
 Coimbatore 641 037

2.Mrs.Padmini Rajan,
Director, Tristar Accomadations Ltd.,
No.131, Race Course Road,
Coimbatore 641 018

3.Mrs.Reshmi Rajan,
Director, Tristar Accomadations Ltd.,
No.657, Avinashi Road,
Coimbatore 641 037

4.Uma Rajan,
W/o Naren Rajan,
No.657, Avinashi Road,
Coimbatore 641 037

..Applicants/
1 to 3rd & 5th Defendants

Vs.

1.I.Jeyakanthan,
S/o Ayyamperumal,
J.K.S.Enterprises,
No.6/1 Bharathi Apartment,
1st Floor, Bharathi Nagar 3rd Street,
North Usman Road, T.Nagar,
Chennai 600 017

..Respondent/Plaintiff

2.Mr.M.Ramakrishnan,
Director, Tristar Accomadations Ltd.,
Flat No.5, Mithula Apartments,
Ram Nagar,
Coimbatore 641 009

..Respondent/4th Defendant

Application praying that this Hon'ble Court be
pleased to allow the leave to defend in the above
mentioned suit unconditionally.

A.SR.No.27467 of 2017 :

1.Tristar Accomadations Ltd.,
Rep.by its Director,
Mrs.Padmini Rajan,
No.657, Avinashi Road,
Coimbatore 641 037

2.Mrs.Padmini Rajan,
Director, Tristar Accomadations Ltd.,
No.131, Race Course Road,
Coimbatore 641 018

3.Mrs.Reshmi Rajan,
Director, Tristar Accomadations Ltd.,
No.657, Avinashi Road,
Coimbatore 641 037

4. Uma Rajan,
W/o Naren Rajan,
No.657, Avinashi Road,
Coimbatore 641 037 ..Appellants/Defendants -3 & 5

Vs.

1. I. Jeyakanthan,
S/o Ayyamperumal,
J.K.S. Enterprises,
No.6/1 Bharathi Apartment,
1st Floor, Bharathi Nagar 3rd Street,
North Usman Road, T.Nagar,
Chennai 600 017 ..1st Respondent/Plaintiff

2. Mr. M. Ramakrishnan,
Director, Tristar Accomadations Ltd.,
Flat No.5, Mithula Apartments,
Ram Nagar,
Coimbatore 641 009 ..2nd Respondent/4th Defendant

(The suit against the 2nd respondent / 4th defendant has been withdrawn by the 1st respondent/plaintiff as per order of the Master dated 10.02.2017. Notice or process therefore is not required to be taken on the 2nd respondent/4th defendant)

Application praying that this Hon'ble Court be pleased to set aside the order dated 28.11.2016 passed by the learned Master in A.No.4406/2016 in C.S.No.341/2016 and thus render justice.

A.SR.No.27345 of 2017 :

1. Tristar Accomadations Ltd.,
Rep.by its Director,
Mrs.Padmini Rajan,
No.657, Avinashi Road,
Coimbatore 641 037

2. Mrs. Padmini Rajan,
Director, Tristar Accomadations Ltd.,
No.131, Race Course Road,
Coimbatore 641 018

3. Mrs. Reshmi Rajan,
Director, Tristar Accomadations Ltd.,
No.657, Avinashi Road,
Coimbatore 641 037

4. Uma Rajan,
W/o Naren Rajan,
No.657, Avinashi Road,
Coimbatore 641 037 ..Appellants/Defendants -3 & 5

Vs.

1. I. Jeyakanthan,
S/o Ayyamperumal,
J.K.S. Enterprises,
No. 6/1 Bharathi Apartment,
1st Floor, Bharathi Nagar 3rd Street,
North Usman Road, T. Nagar,
Chennai 600 017 ..1st Respondent/Plaintiff
2. Mr. M. Ramakrishnan,
Director, Tristar Accomadations Ltd.,
Flat No. 5, Mithula Apartments,
Ram Nagar,
Coimbatore 641 009 ..2nd Respondent/4th Defendant

(The suit against the 2nd respondent / 4th defendant has been withdrawn by the 1st respondent/plaintiff as per order of the Master dated 10.02.2017. Notice or process therefore is not required to be taken on the 2nd respondent/4th defendant)

Application praying that this Hon'ble Court be pleased to set aside the order dated 28.11.2016 passed by the learned Master in A.No.4406/2016 in C.S.No.341/2016 and thus render justice.

A.Nos.7214 & 7215 of 2017 :

1. Tristar Accomadations Ltd.,
Rep. by its Director,
Mrs. Padmini Rajan,
No. 657, Avinashi Road,
Coimbatore 641 037
2. Mrs. Padmini Rajan,
Director, Tristar Accomadations Ltd.,
No. 131, Race Course Road,
Coimbatore 641 018
3. Mrs. Reshmi Rajan,
Director, Tristar Accomadations Ltd.,
No. 657, Avinashi Road,
Coimbatore 641 037
4. Uma Rajan,
W/o Naren Rajan,
No. 657, Avinashi Road,
Coimbatore 641 037 ..Applicants/Defendants 1-3 & 5

Vs.

1. I. Jeyakanthan,
S/o Ayyamperumal,
J.K.S. Enterprises,
No. 6/1 Bharathi Apartment,
1st Floor, Bharathi Nagar 3rd Street,
North Usman Road, T. Nagar,
Chennai 600 017 ..1st Respondent/plaintiff
2. Mr. M. Ramakrishnan,
Director, Tristar Accomadations Ltd.,
Flat No. 5, Mithula Apartments,
Ram Nagar,
Coimbatore 641 009 ..2nd Respondent/4th Defendant

(The suit against the 2nd respondent has been withdrawn by the 1st respondent plaintiff as per order dated 10./2.2017 of the Hon'ble Master. Notice therefore is not required to be taken on the 2nd respondent)

A.No.7214 of 2017

Application praying that this Hon'ble Court be pleased to condone the delay of 342 days in filing A.Sr.No.27467/2017 against the order dated 22.08.2016 passed by the Master in A.No.3985/2016 in C.S.No.341/2016 and thus render justice.

A.No.7215 of 2017

Application praying that this Hon'ble Court be pleased to condone the delay of 244 days in filing A.Sr.No.27345/2017 against the order dated 28.11.2016 passed by the learned Master in A.No.4406/2016 in C.S.No.341/2016 and thus render justice.

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

A.No. 7214 of 2017 had been filed to condone the delay of 342 days in filing A.SR.No. 27467 of 2017 against the order dated 22.08.2016 passed by the Master in A.No.3985 of 2016 in C.S.No. 341 of 2016.

2. A.No. 7215 of 2017 had been filed to condone the delay of 244 days in filing A.SR.No. 27345 of 2017 against the order dated 28.11.2016 passed by the Master in A.No.4406 of 2016 in C.S.No. 341 of 2016.

3. A.No. 7214 of 2017 had been filed by the first, second, third and fifth defendants in the suit. Similarly, A.No. 7215 of 2017 had also been filed by the first, second, third and fifth defendants in the suit.

4. The suit in C.S.No. 341 of 2016 had been filed under Order XXXVII Rule 1 of the Code of Civil Procedure by I.Jeyakanthan against (1) Tristar Accomadations Ltd., represented by its Director, Mrs. Padmini Rajan; (2) Mrs. Padmini Rajan; (3) Mrs.Reshmi Rajan; (4) Mr.M.Ramakrishnan; and (5) Uma Rajan. The suit had been filed for a Judgement and Decree against the defendants that they are jointly and severally liable to repay the suit amount together with interest and costs.

5. According to the plaintiff, the father of the second, third and fourth defendants, who was the Managing Director of the First Defendant Company, had borrowed a sum of Rs.2,00,00,000/- crores from the plaintiff, after executing necessary documents on 20.02.2012 and 23.02.2012. He paid interest regularly. He borrowed another sum of Rs.45/- lakhs from the plaintiff on 28.03.2012. He borrowed a further sum of Rs.1,00,00,000/- crore on 10.02.2015, from the plaintiff. He executed a demand promissory note for the entire loan of Rs.3,45,00,000/- crores in favour of the plaintiff. He issued cheques for that amount on 10.02.2015 as security. However, he died on 21.05.2015. The defendants had agreed to discharge the loan. They did not do so. The plaintiff sent a letter demanding repayment. The defendants did not do so. It is under these circumstances that the suit had been filed.

6. It is to be stated that though the value of the suit is more than Rs.1/- crore, since the entire issue revolves around borrowal of money and execution of promissory notes and cheques, the litigation is not a commercial dispute. In the said suit, the applicants/1-3rd and 5th defendants herein had filed A.No. 4406 of 2016 seeking leave to defend. Similarly, the plaintiff had filed A.No. 3985 of 2016 to pass a Judgement and Decree. The Master by order dated 22.08.2016 had allowed A.No. 3985 of 2016 and by order dated 28.01.2016 had dismissed A.No. 4406 of 2016.

7. The Applicants/1-3rd and 5th defendants herein have stated that they have not taken over the administration of the first defendant Company. Unfortunately, Mr.Naren Rajan, who was the Managing Director of the first Defendant Company, died in Spain on 21.05.2015 and had taken over the administration. It had been stated that the deponent of the affidavit, who is the third defendant, had recently married on 27.11.2014 and had shifted to New Delhi. Doctors found presence of nulliparous with endometrial polyp and advised operative surgery and hysterectomy for the same. It had been stated that the deponent had been undergoing routine treatment. She had been advised to take rest. She was not able to take care of the first defendant's Company.

8. Aggrieved by the order of the Master, the present applications had been filed in O.S.A.SR.Nos. 18949 and 17573 of 2017. There was a delay in filing the Original Side Appeals. Subsequently, Original Side Appeals were withdrawn on 02.08.2017 and the Division Bench had granted liberty to take recourse to appropriate remedy in accordance with law. It had been stated that in view of all these facts, there has been a delay in preferring the Appeals against the order of the Master.

9. A counter has been filed by the first respondent/plaintiff. It had been stated that the

applicants had contested the application seeking leave to sue and that leave should not be granted. Thereafter, the suit was numbered in C.S.No. 341 of 2016. This Court directed the applicants to furnish security to the value of the suit claim on or before 19.08.2016. Private notice was also permitted. The applicants were also served with copies of all documents. They do not enter appearance and they did not file an application seeking leave to defend as contemplated under Order 7 of the Original Side Rules. Finally, they entered appearance only on 22.07.2016. Summons for Judgement was served on 22.07.2016 itself. They did not file any application seeking leave to defend the suit. The said Application has to be filed within 10 days. Since it was not filed within time, the plaintiff had filed A.No. 3985 of 2016 to pass a Judgement and Decree and this was allowed on 22.08.2016. The matter had reached finality. Thereafter, even though there is no provision to condone the delay in filing leave to defend application, the applicants had filed A.No. 4406 of 2016 seeking leave to defend and that application was also dismissed by the Master. Thereafter, they filed Appeal again with a delay of 219 days. Since the Original Side Appeal was not maintainable, the said Appeal was withdrawn. It had been stated that the applicants are deliberately dragging on the proceedings.

10. This court heard the learned counsel. I have carefully considered the rival contentions.

11. This is an unfortunate case where the plaintiff had instituted a suit on the basis of a promissory note for borrowal of money. It is not a commercial transaction. However, the Former Director of the first defendant Company had borrowed money. This Court had also directed the defendants to furnish security to the value of the suit claim in A.No. 2829 of 2016. However, security was not furnished. As a matter

of fact, the present applicants had even contested the leave to sue application prior to numbering the suit. Consequently, they are aware of the judicial proceedings. Subsequently, after the suit had been numbered, they did not appear before the Court. They entered appearance very belatedly on 22.07.2016. Immediately on the very same day, summons for Judgement was served on them. They have to file an application seeking leave to defend within a period of 10 days as contemplated under Order 7 Rule 6 of the Original Side Rules. They did not do so. Consequently, the respondent/plaintiff had filed A.No. 3985 of 2016 to pass a Judgement and Decree in the suit. This was also allowed. Thereafter, even though there is no application to condone the delay, they had filed A.No. 4406 of 2016 seeking leave to defend and that application was also dismissed. As against both the applications, instead of filing application before this Court, the applicants appear to have file Original Side Appeals. There was a delay in filing the Original Side Appeals.

12. I hold that the applicants have deliberately dragging on the proceedings to the detriment of the plaintiff. They are not interested in honouring the direction of the Court to furnish security. The reason sought for the delay is that the third applicant/third defendant was married on 27.11.2014 and had to shift to New Delhi. Further, it was stated that Doctors found presence of nulliparous with endometrial polyp and advised operative surgery and hysterectomy for the same. It is stated that she had been undergoing treatment for the same. However, no document has been filed to substantiate these facts. There is not even a voluntary submission made to subject herself for cross examination of these facts.

13. It is clear that the applicants have no *bona fide* for maintaining the applications and they have been filed to drag on the proceedings. I hold that the

delay has not been properly explained. The respondent/plaintiff would certainly put to great loss by dilatory steps taken by the applicants. In view of the above facts, both the applications are dismissed with costs. ***Consequently, all pending applications except Application Nos.7708 and 7709 of 2017, are also dismissed. The above two applications shall be considered if they had been filed within the statutory period of time"**

*incorporated as per order dated 10.04.2018 in A No. 7214 & 7215 of 2017, A SR.No.27467 of 2017 & 27345 of 2016 in A.No. 3985 & 4406 of 2016 in C.S.No.341 of 2016.

Sd/- C.V.K.J.

19.03.2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

MM : 10.04.2018

COURT OFFICER(O.S.)

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