

**CMP Nos.19003,19007, 19008, 19009, 19010,
19043, 19045, 19048, 19049 and 19053 of 2019
in OSA Nos.133, 134, 135, 136 and 137 of 2018**

S.MANIKUMAR,J.
and
D.KRISHNAKUMAR,J.

In CMP Nos.19003,19007, 19008, 19009, 19010, 19043, 19045, 19048, 19049 and 19053 of 2019 in OSA Nos.133, 134, 135, 136 and 137 of 2018 petitioner has sought for a direction to grant leave to the applicants to file written statement in terms of the order dated 05.07.2019 passed by the learned single Judge in C.S.No.896 of 2015. Similar petitions have been filed by other applicants in OSA.Nos.133 to 137 of 2018. Short facts leading to the applications are as follows:

2. C.S.No.896 of 2015 has been filed for declaration, injunction and damages, and rendition of the accounts of profits against the applicants. The respondent had preferred interlocutory applications in O.A.Nos.1192 to 1196 of 2015 in C.S.No.896 of 2015. The learned single Judge was pleased to dismiss the said Original Applications by order dated 10.04.2017. Being aggrieved, first respondent filed OSA Nos.133 to 137 of 2018 and CMP.Nos.8233 to 8248 of 2017. A Hon'ble Division Bench of this Court vide order dated 13.06.2018 disposed of OSA Nos.133 to 137 of 2018 by directing the applicants and respondent No.5 to file the written statement within three weeks from

13.06.2018 and further directed the learned single Judge to dispose of the suit within six months from the date of framing of the issues.

3. The applicants have submitted that the suit was never listed before the learned single Judge. Only in July 2019, suit was listed on 01.07.2019 for the purpose of determining as to whether matter would fall within the purview of commercial dispute and therefore whether Commercial Division of this Court has jurisdiction to entertain the suit, as a commercial suit. Thereafter the matter was adjourned on 05.07.2019 on which date a learned single Judge by order dated 05.07.2019 granted three weeks time to file written statement, but subject to leave of the Hon'ble First Bench / Division Bench of this Court.

4. Applicants further submitted that learned single Judge also in his order dated 05.07.2019 observed that the applicants will approach the Hon'ble First Bench/Division Bench of this Court within a period of two weeks from the date of receipt of a copy of the order made in C.S.No.896 of 2015, for obtaining an order of leave to file the written statement.

5. Applicants have further submitted a copy of the order was directed to be furnished on 12.07.2019. Applicants have valid defence and that therefore written statement has to be filed. Thus in terms of the order dated 05.07.2019

19008, 19009, 19010, 19043, 19045, 19048, 19049 and 19053 of 2019 in OSA Nos.133, 134, 135, 136 and 137 of 2018 have been filed seeking for a direction to grant leave to the applicants to file their written statement in C.S.No.896 of 2015, in terms of the order dated 05.07.2019.

6. Mr.P.H.Arvinth Pandian, learned senior counsel submitted that learned single Judge has granted three weeks time to file written statement of course subject to the leave of the Hon'ble Division Bench. On the above submission he referred to paragraph No.8 of the order dated 05.07.2019 in C.S.No.896 of 2015.

7. Per contra, opposing the prayer sought for, Mr.Ravi Paul, learned senior counsel appearing for the respondent/plaintiff in the suit submitted that there is a huge delay in filing the written statement and that he also submitted that suit was listed before the commercial Division Bench only on 01.07.2019. He has further submitted that applicants could have very well filed their written statement immediately after OSAs were disposed of which they have not done.

8. The learned Senior Counsel for the plaintiff further submitted that after the order was passed on 05.07.2019, matter was posted on 09.08.2019 and 30.08.2019 but the applicants/defendants have not chosen to file their

written statement. Learned senior counsel appearing for the plaintiff/respondent fairly submitted that copy of the written statement was furnished within a period of two weeks from 05.07.2019.

9. Heard the learned senior counsel appearing for the parties and perused the materials on record.

10. Though Mr.Ravi Paul, learned senior counsel appearing for the plaintiff/respondent submitted that the defendants/applicants herein were not diligent in filing the counter affidavit despite the fact that judgment in OSAs rendered on 13.06.2018 till the suit was listed on 05.07.2019, we are not inclined to accept the said contention for the reason that having observed that the suit was not listed for a long time, learned single Judge in the order made in CS.No.896 of 2015 dated 05.07.2019 has granted three weeks time to defendants/applicants for filing the written statement but subject to the leave of the Hon'ble First Bench/Division Bench of this Court.

11. It is also the submission of the learned senior counsel for the plaintiff/respondent that within two weeks from 05.07.2019, a copy of the written statement has been furnished by the applicants, which only goes to show that within three weeks time granted by the learned single Judge, applicants have shown their bonafide intention in filing the written statement.

accounts of profits. Having regard to the prayer sought for and when learned single Judge has already granted three weeks time for filing written statement subject of course to the leave of a Division Bench of this Court, it would be unfair and improper to shut down the defence of the applicants/defendants in the suit. As rightly contended by Mr.P.H.Arvinth Pandian, learned senior counsel for the applicants/defendants, when instant petitions have been taken within three weeks time as provided therefor, leave has to be granted. Denial of the right to file written statement would be amounting to interference with the order of the learned single Judge in C.S.No.896 of 2015 dated 05.07.2019, particularly when no appeal is filed against the order made in C.S.No.896 of 2015 dated 05.07.2019

13. In the light of the above discussion, leave is granted to the applicants to file written statement in C.S.No.896 of 2015 and these petitions are ordered.

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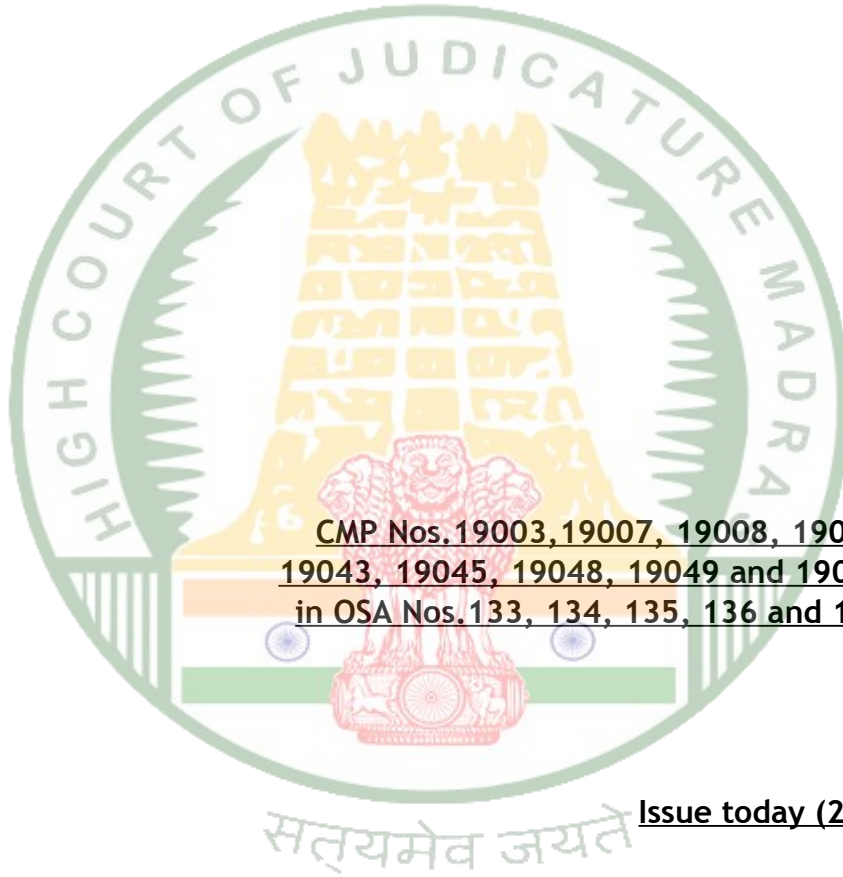
(S.M.K.J.,) (D.K.K.J.,)

20.09.2019

dpq

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