

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.09.2020

PRONOUNCED ON:23.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.Nos. 8500 & 8501 of 2019

And

A.No. 281 of 2020

IN

C.S.No. 945 of 2017

A.No. 8500 of 2019:

Mr.K.Raghu Rama Krishna Raju ... Applicant/3rd Defendant

Vs.

1. IL and FS Financial Services Limited
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... 1st Respondent/Plaintiff
2. M/s. Ind Barath Powergencom Limited
No. 498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035
... 2nd Respondent/1st Defendant
3. M/s. Ind Barath Power Infra Limited
New No.20 (Old No.129),
Chamiers Road
Nandanam, Chennai – 600 035.
... 3rd Respondent/2nd Defendant

4. M/s. Tamil Nadu Generation and Distribution Corporation Limited
10th Floor, NKPRR Maligai
No. 144, Anna Salai,
Chennai – 600 002.

... 4th Respondent/ 4th Defendant

PRAYER: This application filed under Order XIV Rule 8 of O.S Rules read with Sections 4 & 5 of the Limitation Act, to condone the delay of 623 days in filing the written statement of the applicant/3rd defendant.

A.No. 8501 of 2019:

M/s. Ind Barath Power Infra Limited
New No.20 (Old No.129),
Chamiers Road
Nandanam, Chennai – 600 035. ... Applicant/2nd Defendant

Vs.

1. IL and FS Financial Services Limited
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... 1st Respondent/Plaintiff
2. M/s. Ind Barath Powergencom Limited
New No. 20 (Old No.129),
Chamiers Road,
Nandanam, Chennai – 600 035 ... 2nd Respondent/1st Defendant
3. Mr.K.Raghu Rama Krishna Raju
New No. 20 (Old No.129),
Chamiers Road,
Nandanam, Chennai – 600 035.

... 3rd Respondent/3rd Defendant

4. M/s. Tamil Nadu Generation and
Distribution Corporation Limited
10th Floor, NKPRR Maligai
No. 144, Anna Salai,
Chennai – 600 002.

... 4th Respondent/ 4th Defendant

PRAYER: This application filed under Order XIV Rule 8 of O.S Rules
read with Sections 4 & 5 of the Limitation Act, to condone the delay of
623 days in filing the written statement of the applicant/2nd defendant.

A.No. 281 of 2020:

M/s. Tamil Nadu Generation and
Distribution Corporation Limited
10th Floor, NKPRR Maligai
No. 144, Anna Salai,
Chennai – 600 002.

... Petitioner/4th Defendant

Vs.

1. IL and FS Financial Services Limited
No.498, Karumuttu Centre,
3rd Floor, South Wing, Anna Salai,
Nandanam, Chennai – 600 035. ... Respondent/Plaintiff
2. M/s. Ind Barath Powergencom Limited
New No. 20 (Old No.129),
Chamiers Road,
Nandanam, Chennai – 600 035
3. M/s. Ind Barath Power Infra Limited
New No. 20 (Old No. 129), Chamiers Road
Nandanam, Chennai – 600 035.

4. K.Raghu Rama Krishna Raju
New No. 20 (Old No.129),
Chamiers Road,
Nandanam, Chennai – 600 035.

... Respondents/ Defendants 1 to 3

PRAYER: This application filed under Order VIII Rule 1 of CPC to condone the delay of 632 days in filing the written statement in C.S.No. 945 of 2017

For Applicant in A.Nos. 8500
& 2nd & 3rd defendants in
A.No. 8501 of 2019 : Mr. Arun Kumar

For Applicant in A.No. 281/2020
4th Defendant : Mr. V.Viswanathan

For Respondent/plaintiff
in all the applications : Mr. Manoj Menon

ORDER

A.No. 8500 of 2019 had been filed by the third defendant in the suit seeking to condone the delay of 623 days in filing the written statement.

2. A.No. 8501 of 2019 had been filed by the second defendant in the suit seeking to condone the delay of 623 days in filing the written statement.

3. A.No. 281 of 2020 had been filed by the fourth defendant in the suit seeking to condone the delay of 632 days in filing the written statement.

4. Since the issue to be decided is common, all the three applications are taken up together for consideration.

5. The suit was instituted in the Original Side of this Court and later was transferred to the Commercial Division and the jurisdiction of the Commercial Division was determined by order dated 05.03.2018. On the same day, by the same order, exercising powers under the Proviso to Section 15(4) of the Act 4 of 2016, namely, the Commercial Courts Act 2015, this Court had granted time to all the defendants to file their written statement within a period of 30 days and more specifically on or before 04.04.2018. The written statement had not been filed within the said period of 30 days. They had also not been filed within the extended period of 90 days granted under the Act, wherein, if sufficient reasons are advanced, the Court may take the written statement on file.

6. The applications now under consideration have been filed along with the written statement on 25.10.2019 by the second and third defendants and on 14.11.2019 by the fourth defendant. Under Order VIII Rule 1 Proviso CPC as amended, the following proviso had been substituted by the amendment brought about by the Commercial Courts Act 2015. This is as follows:-

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

7. Therefore, when this Court had granted 30 days time to file a written statement from the date when jurisdiction was assumed, namely,

05.03.2019, even if leverage is given for an additional 90 days, the period would have expired on 04.07.2018. The written statements by the present applicants/ defendants have not been filed even within that period.

8. In A.No. 8500 of 2019, the reason given for the delay was that though the suit summons was served on 09.01.2018, for the past over 20 months, due to personal, professional and family reasons, the deponent was travelling within and outside India and was not able to file the written statement within the prescribed period. It was also stated that he had been elected as a Member of Parliament and therefore was pre-occupied with discharging his Constitutional duties. It was also stated that this Court by order dated 26.09.2019, had stated that he can file his written statement on or before 16.10.2019 so that trial can be taken up.

9. In the affidavit filed in support of A.No. 8501 of 2019, the deponent stated that for the past over 20 months, due to personal, professional and family reasons, he had been travelling within and outside India and consequently, was not able to file the written statement though the suit summons was served on 09.01.2018. It was also stated that the applicant company was facing other legal proceedings under the

Insolvency and Bankruptcy Code and therefore, the legal department was not able to provide instructions to file the written statement. It was also stated that this Court by order dated 26.09.2019 had directed written statement to be filed on or before 16.10.2019.

10. In the affidavit filed in support of A.No. 281 of 2020, it had been stated that the suit summon was served in November 2017 and the relevant papers were handed over to the standing counsel. The standing counsel requested production of complete details of the case and the payment status. The details were also handed over and initially counter was filed to the pending applications. Thereafter, the first defendant company was taken over under the Resolution Process. It was stated that the written statement which was prepared was not filed before the Registry of the Madras High Court. It was also stated that the Court had granted time till 16.10.2019 for filing written statement by order dated 26.09.2019.

11. I have carefully considered the arguments advanced by Mr.K. Arun Kumar, learned counsel appearing on behalf of the applicant in A.Nos. 8005 & 8501 of 2019 and Mr.V.Viswanathan, learned counsel appearing for the applicant in A.No. 281 of 2020 and Mr. Manoj Menon, the learned counsel for the respondent/plaintiff.

12. It is to be pointed out that the very object of the Commercial Courts Act and fast tracking the proceedings of commercial suits was to bring about speedy settlement of commercial disputes and to bring about an early resolution of the issues raised. High value commercial disputes involve complex facts and questions of law. There was therefore a necessity to provide for an independent mechanism for early resolution of the issues. The constitution of the Commercial Division in each High Court was also recommended by the Law Commission of India in its 188th report. There was a further recommendation by the Law Commission of India in the 253rd report. Thereafter, the Commercial Courts Act came into effect from 31.12.2015. Specific time lines were given and there was a mandate to adhere to the time lines fixed. One important time line was the filing of the written statement. There was an amendment to the proviso to Order VIII Rule 1 CPC and it was mandated that the written statement shall be filed within a period of 30 days from the receipt of suit summons and thereafter, an additional period of 90 days was granted if proper reasons were advanced. At any rate, it was specifically stated that the Courts cannot grant more than 120 days for filing of the written statement from the date of receipt of suit summons.

13. With respect to suits, which have been transferred to the Commercial division, like the suit in the present case, the proviso to Section 15(4) of the Commercial Courts Act 2015, directed that the Court shall prescribed a new time line for filing of the written statement. Section 15(4) is as follows:-

“15. Transfer of pending cases.-

(1)

(2)

(3)

(4) The Commercial Division or Commercial Court, as the case may be, may hold case management hearings in respect of such transferred suit or application in order to prescribe new timelines or issued such further directions as may be necessary for a speedy and efficacious disposal of such suit or application in accordance [with Order XV-A] of the Code of Civil Procedure, 1908 (5 of 1908).

Provided that the proviso to sub-rule (1) of rule 1 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such transferred suit or application and the Court may, in its discretion, prescribe a new time period within which the written statement shall be filed.

(5)

14. So far as the present suit is concerned as stated above, on transfer, the jurisdiction was assumed on 05.03.2018. A time line was prescribed to file the written statement within a period of 30 days, namely, till 04.04.2018. Even if the additional period of 90 days is to be granted for sufficient reasons to be advanced, the time for filing written statement expired on 04.07.2018. Thereafter, the Court cannot grant extension of time. The extension of time granted and relied on by the applicants on 26.09.2019 is probably misconceived.

15. In **2019 2 SCC 210 M/S Scg Contracts India Pvt. Ltd. Vs Ks Chamankar Infrastructure Pvt. Ltd., & Ors.**, the Hon'ble Supreme Court was concerned with a case wherein the defendants pleaded delay in filing of

written statement owing to the fact that they had filed an application to reject the suit under Order 7 Rule 11 CPC. The Hon'ble Supreme Court, very specifically stated that the time limit prescribed under the Commercial Courts Act, 2015 is mandatory in nature and cannot be extended. The time limit prescribed is 30 days initially and a further period of 90 days subject to acceptable reasons given for the delay. It had been stated that the Court cannot go beyond that period and condone the delay. Consequently, even the statement in Section 15(4) proviso that the Court can prescribe new time period would only mean that the Court can prescribe a time period for calculation of the starting point for filing of the written statement and cannot mean that the Court can extend the period of filing written statement beyond the period of 120 days. In the instant suit, as pointed out, a new time period was fixed, namely, 30 days, till 04.04.2018 for filing written statement. The written statement was not filed. It has not been pleaded why that time line has not been kept up by the applicants.

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16. The reasons stated that the applicants in A.Nos.8500 & 8501 of 2019 were pre-occupied and that one of them was a Member of Parliament cannot be accepted since before a Court of law, every party is equal and a special privilege cannot be granted to anyone. The time lines fixed by the

legislature applies to all the parties to any suit. The reasons stated in A.No. 281 of 2020 that the standing counsel had already prepared the written statement but had not filed the same into Court also cannot be accepted since by no stretch of imagination is it be possible to accept that the standing counsel was physically prevented from filing the written statement into Court.

17. This Court has no jurisdiction to condone the delay of 623 days / 632 days in filing the written statement. I hold that the Court cannot legislate and arbitrarily prescribe a new time line which is not prescribed under the statute. Hence, it is held that the applicants/ the second, third and fourth defendants have forfeited their rights to file the written statement. However, the said defendants can cross examine the witness for the plaintiffs during trial, but cannot travel beyond the averments made in the plaint.

18. With the above observation, the applications are dismissed. No costs.

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Index: Yes/No

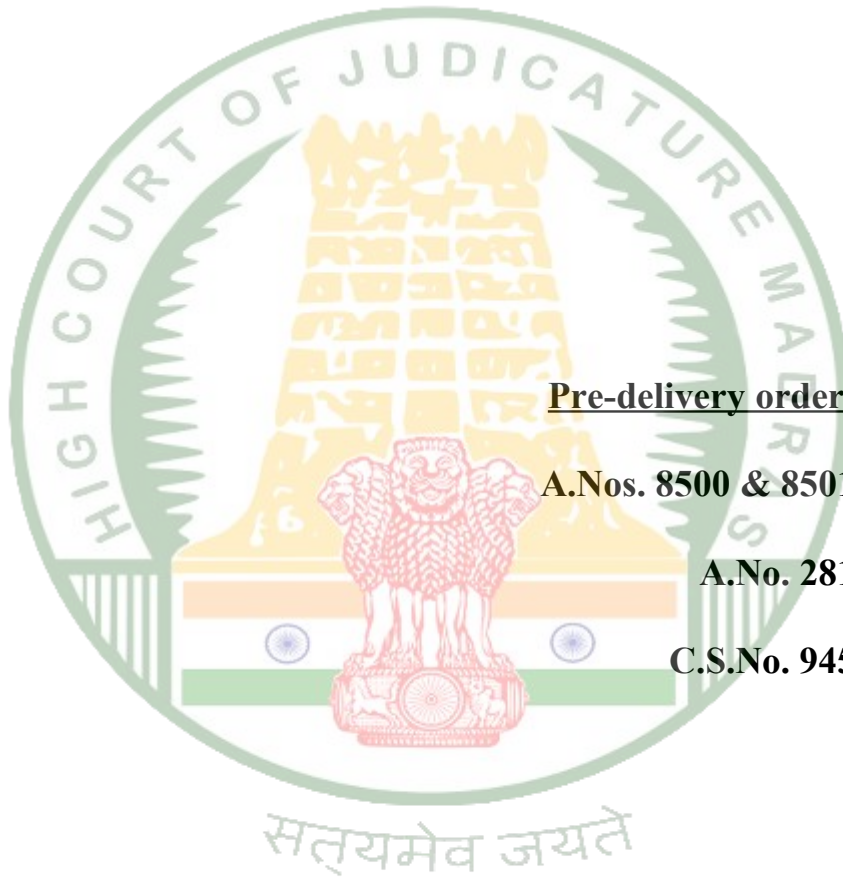
Web: Yes/No

Speaking order : Yes / No

vsg

C.V.KARTHIKEYAN, J.

Vsg



Pre-delivery order made in

**A.Nos. 8500 & 8501 of 2019
And
A.No. 281 of 2020
IN
C.S.No. 945 of 2017**

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23.09.2020