

A.No.9590 of 2019
in C.S.No.229 of 2019

Dr.G.JAYACHADRAN, J.

Heard the learned counsels for the plaintiff and the defendant.

2. This is a peculiar case, where the defendant even before the receipt of the suit summons on 13.04.2019 based on the notice received has filed his written statement in the Registry on 11.04.2019, of course, with certain defects. The Registry has returned the written statement to rectify the defects and re-present the same.

3. Meanwhile, the learned counsels of the respective parties have proceeded with the case contesting the interlocutory application. In fact on 26.06.2019, this Court after examining the pleadings, documents that have been produced before it has framed issues for trial. The case was sent to Additional Master for recording evidence. PW1 was examined and 72 Exhibits were marked on 09.07.2019 and adjourned for cross examination of PW1.

4. The learned counsel for the defendant's side has completed the cross examination on 31.07.2019. The plaintiff has closed his side evidence. When the matter was adjourned for defendant's side witnesses, an application was

taken up by the defendant to adduce additional documents. The said application No.5683 of 2019 was allowed by this Court on 06.07.2019 and directed the Master to record the evidence of defendant's side witnesses on 28.11.2019.

5. Meanwhile, the written statement filed in the Registry on 11.04.2019, which was returned for curing the defects, was represented by the defendant on 12.09.2019. The Registry has returned the written statement again pointing out further defects in the written statement. At last, the defendant has represented the written statement on 05.11.2019 along with Judge's summons and affidavit to condone 176 days delay in filing his written statement as pointed out. Peculiar situation has arisen in this matter, since the Commercial Courts Act has given a time frame for filing the written statement, which can be at the most 120 days from the date of receipt of suit summons. Technically, though the plaintiff has filed the written statement within the time frame, but due to his failure to rectify the defects and representing the same in time, the time prescribed for filing the written statement under the statute has crossed. The Court has proceeded with the available pleadings and framed issues and also witnesses have been examined on the side of the plaintiff.

6. In this background of facts, this Court is called upon to consider whether 176 days delay in representing the written statement will prejudice the plaintiff. The plaintiff in the counter states that there is no justifiable cause shown to condone the inordinate delay of 176 days. Further it is also stated that the defendant under the guise of the present application to condone the delay in filing written statement, attempts to cover up lacunae. The defendant who has lost his right to file the written statement, cannot be permitted to do so after the time prescribed for filing the written statement under the guise of condoning the delay in representation.

7. This Court considered the facts of this case and pleadings as stated by the plaintiff as well as the defendant in this application finds that this Court has framed issues after perusing the plaint as well as the written statement though it was not taken on file by the Registry. It appears that the advance copy served to the plaintiff counsel was circulated to the Court while framing the issues and parties have also proceeded further by examining and cross examining the witnesses.

8. In such circumstances, not accepting the written statement which is already recorded and taken note by this Court while framing the issues will not meet the ends of the justice. Therefore taking note of the peculiar

circumstance in this case, the delay of 176 days to represent the written statement is condoned on payment of Rs.25,000/- as costs by the applicant/defendant payable to the Secretary, Tamilnadu State Legal Services Authority, High Court, Chennai on or before 04.02.2020.

9. As pointed out earlier, condoning the delay in representation and admitting the written statement on file will not have no other consequence, since the Court has taken note of content of the written statement while framing the issues.

10. The Additional Master shall proceed with the examination of the defendant's side witnesses on 10.02.2020 and complete the examination of the defendant's side witnesses by 17.02.2020.

11. Post the matter before this Court on 20.02.2020.

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