

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2020

Pronounced on : 30.09.2020

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

A.No.8587 of 2019

in

C.S. (Comm. Div.) No.418 of 2018

1.J.N.Jahath Ramjee,

2.Sai Sri Lakshmi Ramjee,

3.LSR Properties India Pvt. Ltd.,Applicants /Defendants

Vs.

1.Y.K.Mohanrao

2.Y.S.Lakshmi

3.Y.Rajeswararao

(All three plaintiffs are represented by their
Power Agent Y.Nagarajesh)

4.Y.NagarajeshRespondents/Plaintiffs

Prayer:- This application filed under Order XIV Rule 8 of the O.S Rules R/w. Order IX Rule 13 of C.P.C., prayed to condone the delay of 59 days in filing the written statement.

For Applicants / Defendants : Mr.T.Mohan

For Respondents / Plaintiffs : Mr.K.V.Babu

ORDER

This application has been filed by the defendants in the suit, seeking for a direction to condone the delay of 59 days in filing the written statement.

2.In the affidavit filed in support of the said application, it had been stated that the suit summons had been received on 14.07.2018 (sic). It was further stated that after obtaining ex-parte injunction, the plaintiffs had not complied the stipulations under Order XXXIX Rule 3 of the Code of Civil Procedure, 1908. It was stated that there were criminal cases registered as against the defendants and thereafter a Memorandum of Understanding had been executed on 16.02.2019. But however, the same was signed under duress. It was stated that the petitioners were not able to file the written statement within time. It was stated that under these circumstances, there was a delay of 59 days in filing the written statement.

3.A counter affidavit had been filed by the 1st respondent / 1st plaintiff. In the counter affidavit, it had been stated that the counsel for the defendants had filed their valakat in the suit on 30.07.2018 itself. It was stated that the suit had been adjourned to various subsequent dates. It was stated that the Memorandum of Understanding dated 16.02.2019 had been entered into. The veracity of the same was directed to be tested by adducing evidence. The 1st applicant herein had tendered evidence and was also cross-examined. Thereafter, enquiry on that issue stood adjourned time and again for letting in evidence of the 2nd applicant. However, that did not fructify even though a Commission was appointed to record evidence. Finally, on 21.01.2020, it was represented that the time period under the Memorandum of Understanding had itself expired on 15.11.2019 and therefore, reliance was not being placed on the same.

4. With respect to the delay, the contention that the applicants / defendants was served only on 14.07.2018 (sic), was not correct. The reasons for the delay namely, that there were complaints and counter complaints before the Police authorities would not be adequate reasons for condoning the delay in filing the written statement. It was stated that

the averment that the suit summons was served on 16.07.2019 was factually incorrect.

5.It was further stated that regardless of service of suit summons, since the counsel had entered appearance on 30.07.2018, it is to be presumed that the applicants / defendants have full knowledge of the suit proceedings and therefore had to file their written statement within 120 days from the date of filing the vakalat. It was also stated that the vakalat was filed in the suit and not in the Application. It was also stated that compliance under Order XXXIX Rule 3(a) of the Code of Civil Procedure had been satisfied and it was for that reason that vakalat was also filed on 30.07.2018. It was therefore stated that the application should be dismissed.

6.A rejoinder had been filed on behalf of the applicants / defendants, wherein, it had been reiterated that there had been no compliance of the stipulations under Order XXXIX Rule 3 of the Code of Civil Procedure. It was stated that the Court summons was not at all served to the defendants. It was stated that the counsel for the plaintiffs, through their letter, served the copies to the counsel for the defendants on

25.07.2019 only. It was also stated that this was done owing to the directions by the learned Master in his proceedings dated 13.08.2019. It was stated that service of summons was completed and recorded by the learned Master by proceedings dated 13.08.2019. It was therefore stated that the period for filing of written statement commenced only from the date of service of the suit summons. It was again reiterated that the written statement had been filed only with a delay of 59 days and adequate reasons had been given and therefore it had been stated that the delay can be condoned and the application should be allowed.

7.Heard arguments advanced by Mr.T.Mohan learned counsel for the applicants / defendants and Mr.K.V.Babu learned counsel for the respondents / plaintiffs.

8.For the sake of convenience the parties would be referred as plaintiffs and the defendants.

9.I have also had the benefit of examining the materials on records.

10.The suit had been instituted in the Commercial Division on 21.06.2018. Along with the suit, the plaintiff also filed O.A.No.605 of 2018 seeking an order of restraining the defendants from alienating or transferring the properties which had been described in the schedule to the Judges' Summons. An order of interim injunction was granted on 06.07.2018. It was directed that the plaintiff should comply with the stipulations under Order XXXIX Rule 3(a) of the Code of Civil Procedure, 1908 on or before 07.07.2018.

11.A perusal of the records show that the plaintiffs have filed an affidavit stating that they have complied with the provision under Order XXXIX Rule 3(a) of the Code of Civil Procedure and this affidavit was filed in Court on 09.07.2018. Along with the affidavit, three postal receipts were also enclosed which showed that notices had been sent through post on 07.07.2018. No further affidavit had been filed by the plaintiffs indicating whether such notices had been served on the defendants or have returned unserved. It is a fact that the counsel entered appearance on 30.07.2018 on behalf of the defendants.

12. On establishment of the Commercial Division, it had been notified that the Original Side of the Madras High Court would be the Commercial Division insofar as the suits instituted within the jurisdiction of the Madras High Court are concerned. To a large extent, the provisions under the Original Side Rules of the Madras High Court are also followed, even with due adherence to the provisions of the Commercial Courts Act, 2015 and the Code of Civil Procedure, 1908 as amended by the said Act.

13. The Proviso to Order VIII Rule 1 of the Code of Civil Procedure had been amended by the Commercial Courts Act, 2015. The same is as follows:

“Order VIII Rule 1:

Written Statement:- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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 same on such other day, as may be specified by the Court, for

reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

14.It is thus seen that the written statement had to be filed within thirty days from the date of service of summons. It is also provided in Order IV Rule 7(3) of the Original Side Rules of the Madras High Court that when an Advocate had entered appearance in an Interlocutory proceedings, service of the summons could be made on the advocate on behalf of the parties. Order IV Rule 7 of the Original Side Rules are given below:

“R.7. (1) The summons shall be in Form No.13 in Appendix II, with such variations as the circumstances may require.

(2)The summons shall be served within fourteen days from the date thereof in the case of the proceedings other than proceedings under Order VII, and within seven days from the date thereof when the proceedings are under Order VII, or in the case of a defendant to be served outside the city of

Madras within such time as the Registrar may fix and endorse thereon.

(3)Notwithstanding anything contained in Order V of the Code for the service of summons, where an advocate has entered appearance in an interlocutory proceeding, service of summons in the suit may be made on the advocate on behalf of the party.”

15. Form – 13 in Appendix – II of the Original Side Rules of the Madras High Court is the form addressed to the defendants putting him on notice that the plaintiff had instituted a suit by presenting a plaint. It indicates the reliefs sought and directs him to appear on a particular date after the service of summons in person or through an advocate to answer to the claim. It is also specifically mentioned in the form that the defendant should file the written statement within a period of 30 days after the service of the summons. It is also informed that the defendant can resort to any one of the modes of alternate resolution which is provided in Section 89 of the Code of Civil Procedure, 1908, namely, arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation.

16.A perusal of the records in the present suit show that the summons on the defendants had been issued and they had been returned with the following endorsements:

“D1 - No such person

Summon is returned unserved on enquiry being made by me it is reported that there is no such person by this name at the said address.

Solemnly affirmed dated 5th day of July 2018.

Signed

Nazir (Bailiff)

D2 - No such person

Summon is returned unserved on enquiry being made by me it is reported that there is no such person by this name at the said address.

Solemnly affirmed dated 5th day of July 2018.

Signed

Nazir (Bailiff)

“D3 - No such company

Summon is returned unserved, on enquiry being made by me it is reported that there is no

such company by this name at the said address.

Solemnly affirmed dated 5th day of July 2018.

Signed
Nazir (Bailiff) ”

17. As had been provided under the Original Side Rules, the matter was listed before the Assistant Registrar for service of summons on 11.06.2019, wherein, directions were given for issuing fresh summons through Court and also privately returnable in two weeks time. Thereafter, it was posted on 02.07.2019, wherein, it was noted that the batta was not filed and Affidavit of Service was also not filed and at request of the learned counsel for the plaintiffs it was posted after one week for filing Affidavit of Service. It was again listed on 09.07.2019, wherein again it was noted that Affidavit of Service was not filed and at request of the learned counsel for the plaintiffs, it was posted after a week for filing Affidavit of Service. It was again listed on 16.07.2019, wherein, it was noted that counsel for the plaintiffs did not appear and since the Affidavit of Service have not been filed for a long time and steps have not been taken for issuing the Court summons the matter was to be listed before the learned Master. The matter was listed before the

learned Master on 23.07.2019, it was adjourned to 08.08.2019 for filing Affidavit of Service. It was then listed on 13.08.2019. On 13.08.2019, the Affidavit of Service filed by the learned counsel on record for the plaintiffs was taken note of by the learned Master and in the affidavit it had been stated that notice along with the plaint, affidavit, Judges summons and typeset, by hand delivery had been served on the counsel for the defendants on 25.07.2019.

18.The covering letter of the counsel for the plaintiffs dated 25.07.2019, had also been enclosed. In the covering letter the learned counsel for the plaintiffs had addressed the learned counsel for the defendants as follows:

“I am hereby serving you the plaint, affidavit, judges summons and typed set in O.A.No.605 of 2018 and A.No.4737 of 2018 in C.S.No.418 of 2018 as per order 39 rule 3 of CPC as required. Please receive and acknowledge the same to us.”

19.This was received by the learned counsel for the defendants on 25.07.2019. This was recorded on 13.08.2019 by the learned Master and it was stated that service has been completed, process is closed.

20.In the present application the defendants seek to take advantage of this fact that suit summons were actually served only on 25.07.2019 and therefore, their clock to file written statement started to tick only from that date. It had been urged that they have a mandatory period of 30 days, and thereafter, an additional period of 90 days provided sufficient reasons are advanced.

21.Order VIII Rule 1 of the Code of Civil Procedure, 1908 also stipulates that the defendant shall, within 30 days from the date of service of summons on him, present a written statement of his defence.

22.By the proviso in the amended Code of Civil Procedure, it had been further stipulated that the Court may grant him further time to file written statement for reasons to be recorded on payment of costs. The said period shall not be later than 120 days from the date of service of summons and on expiry of 120 days, the defendants shall forfeit their

right to file written statement and the Court shall not allow the written statement should be taken on record.

23.The service of summons which has been mentioned in Order VIII Rule 1 relates to Order V Rule 1 of the Code of Civil Procedure. Order V Rule 1 of Code of Civil Procedure, is as follows:

“1.Summons:-

(1)When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant;

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plea and admitted the plaintiff's claim;

Provided further that where the defendant fails to file the written statement within the said

thirty days, he shall be allowed to file the same on such other day as may be specified by the Court for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

(a) In person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints and shall be sealed with the seal of the Court.

24.Order V Rule 10 of the Code of Civil Procedure gives the Mode of Service.

“10.Mode of service:-

Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.”

25.As stated, if the counsel had entered appearance on behalf of the defendants in any application, then the Original Side Rules provide for service of summons on the counsel. It is evident that the plaintiffs in this case had not undertaken such step. Service of the suit summons under Form-13 to Order IV Rule 5 of the Original Side Rules is very necessary, since it not only puts the defendants on notice, that they will have to file the written statement within a period of 30 days, but more importantly it also gives information that the defendants may resort to any one of the modes of alternate disputes as provided in Section 89 of the Code of Civil Procedure namely, Arbitration, Conciliation, Judicial Settlement including settlement through Lok Adalat or Mediation.

26.In the instant case, without advertng to the merits, the records reveal that the plaintiffs and the defendants had an occasion to involve themselves either voluntarily or otherwise in a Memorandum of Understanding dated 16.02.2019. I am not examining the issues relating to and surrounding the said Memorandum of Understanding, but advertng to the same only because the same had been disclaimed by one of the parties. If the defendants had the opportunity of receiving the suit summons in Form – 13 as provided under Order IV Rule 5 of the Original Side Rules, then probably, a more effective settlement could have been reached between the parties by resorting to any one of the recognised alternative modes of alternative dispute resolution under the sanctity of the Court.

27.The learned counsel for the plaintiffs had relied on a judgment of the learned Single Judge of the Allahabad High Court reported in *AIR 1981 All 400, Sri Nath Agrawal Vs. Sri Nath*, wherein, it had been held that summons cannot be restricted to the date of service under Order V of the Code of Civil Procedure, 1908, but if the defendant is aware of the date to file the written statement, then it is to be deemed that he had waived off his right to receive summons and he cannot raise an objection that he had not served summons.

28.Unfortunately, the said judgment was delivered prior to the introduction of Section 89 of the Code of Civil Procedure, 1908, wherein, settlement of disputes outside the Court had been encouraged and Form – 13 as prescribed by the Original Side Rules of the Madras High Court, specifically, mentioned these alternative dispute resolution methods which the defendants can avail. Further the Original Side Rules provide for service of suit summons on the counsel who had entered appearance. The proviso to Order VIII Rule 1 as amended also speaks only of service of summons and I hold that there cannot be any implied service of summons. An Act prescribed by law has to be carried out in the manner prescribed by law and not in any other manner.

29.The learned counsel for the plaintiffs also relied on the judgment reported in *AIR 1993 SC 2525, Siraj Ahmad Siddiqui Vs. Prem Nath Kapoor*, wherein it had been held that when time had been fixed for filing of the written statement and hearing, the dates bind the written statement regardless of service of summons. That was a suit under Section 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and in that case, the Trial Court

had passed orders on the application of the appellant therein seeking time to file a written statement and permission to deposit the arrears. The Trial Court had given the appellant time until 24th March 1984 to file written statement. Since a specific order was passed directing the appellant therein to file a written statement, the Hon'ble Supreme Court held that the defendants cannot thereafter plead that the suit summons had not been served.

30.The facts in the present case are totally different. The summons form which had been returned unserved are available in the Court records. The court had never fixed any day for filing of the written statement.

31.The learned counsel for the plaintiffs also relied on the judgment reported in *AIR 2008 SC 1006, Sunil Poddar and Ors. Vs. Union Bank of India*, wherein, again the Hon'ble Supreme Court had held that if the Court is convinced that the defendant had knowledge otherwise of the proceedings and had appeared and answered the plaintiff's claim, then he cannot put forward a ground of non service of summons for setting aside an ex-parte decree passed against him by

invoking Rule 13 of Order IX of the Code of Civil Procedure, 1908. In that case, summons were issued by the Court and the defendants appeared. They also filed the written statement. They also then filed an application to delete them from the array of parties. They also filed an application raising preliminary objections regarding the maintainability of the Civil Suit. A further application was also filed stating that the suit was not instituted in accordance with law. It was contended that the plaint was not signed by the person authorised to do so. It was further stated that the suit against the 7th to 9th defendants was not maintainable. A further relief was sought to frame two issues as preliminary issues and decide them. The suit was then transferred to the Debts Recovery Tribunal, Jabalpur. The appellant did not appear before the Debts Recovery Tribunal and thereafter, they claimed ignorance and innocence of all further proceedings. It was specifically found that the appellant therein had appeared before the Civil Court and filed the applications mentioned above. It was stated that if the defendant had notice of the dates of hearing of the suit and had sufficient time to appear and answer the claim of the plaintiff, then the ex-parte decree cannot be set aside, even if it is established that there is irregularity in the service of summons.

32.In the instant case, again the facts are different. It is true that counsel had entered appearance on behalf of the defendants, but as seen from the endorsements of the Assistant Registrar, the suit summons was actually never served on them and the plaintiffs themselves took time to serve the suit summons. Service was completed only by the learned Master and thereafter, the written statement had been presented with a delay of 59 days from that date onwards. The plaintiffs had, during the pendency of the proceeding never contended that the defence should be struck out, since the written statement has not been filed.

33.The learned counsel for the plaintiffs also relied on a Division Bench Judgment of the Delhi High Court reported in **2013 (53) PTC 256(Del), Flight Center Travels Pvt. Ltd. V. Flight Centre Limited and Ors.**, wherein again, an ex-parte decree had been passed and it had been stated that since the defendant appeared at the initial stage, in a sense, there was a waiver of the right to have the summons served on him. The records in the said case, was examined and it was seen that time was also taken for settlement and thereafter, defendants had abandoned their right to defend by stopping to appear.

34.In the present case, the counsel for the defendants appeared on every hearing date and as provided in the Original Side Rules, the plaintiff could have served the suit summons on the counsel for the defendants. They have not done so. They had not served the suit summons when afforded opportunity by the Assistant Registrar. It was only when the matter was posted before the Learned Master did they effect service on the counsel.

35.The learned counsel for the plaintiffs also relied on the judgment reported in ***MANU/DE/0898/2018, Anand Prakash Gupta V. Gold Cause Constructions Pvt. Ltd. And Ors.,*** wherein, a learned Single Judge of the Delhi High Court had observed that where the counsel had entered appearance on behalf of the defendants and the Court had also granted 30 days time to reply to the suit and further cautioned that if the reply is not filed within the said time then the right to file the reply will be closed, then, if the reply is not filed then no indulgence can be granted to the defendants.

36.In the instant case, no such permission was granted and no such

caution was issued by this Court.

37.The learned counsel for the plaintiffs also relied on ***AIR 2019 SC 2691, SCG Contracts India Pvt. Ltd., V. K.S.Chamankar Infrastructure Pvt. Ltd. and Ors.***, wherein, in a case arising from the Commercial Courts Act, 2015, the Hon'ble Supreme Court had very specifically stated that the proviso to Rule 1 of Order VIII of the Code of Civil Procedure, 1908, stated that the defendant can be granted a period of 30 days to file the written statement and thereafter, a further period of 90 days could be granted for reasons to be advanced and no further time can be granted. It was very specifically stated that from the date of the service of suit summons, specific time lines had given and cannot be circumvented by recourse to the inherent power under Section 151 of the Code of Civil Procedure, 1908, to do the opposite of what is stated therein. This rule laid down by the Hon'ble Supreme Court is binding.

WEB COPY

38.The learned counsel for the defendants relied on the judgment of a learned Single Judge of the Delhi High Court in ***Red Bull Ag V. Pepsico India Holding Pvt Ltd*** in ***CS (COMM.) No.1092 of 2018***, judgment dated 28.08.2019, wherein, in a case where the plaintiff

objected the written statement of the defendants from being taken on record, it was observed on examining the records, that the first hearing date was on 28.08.2018 and that the defendants had filed written statement on 06.03.2019. It was held on facts that the defendants can be deemed to have been served with the summons only on 28.11.2018 and thereafter, the written statement was filed on 06.03.2019, within the period of limitation provided by the proviso to Rule 1 of Order VIII of the Code of Civil Procedure, 1908, applicable to the Commercial Suits. The written statement was taken on record subject to payment of costs.

39. On the basis of the dictums laid above, the following facts emerge in the present case:-

i). An ex-parte ad interim injunction was granted in O.S.No.605 of 2018 on 06.07.2018. Notice was ordered, returnable by 30.07.2018. Order 39 Rule 3(a) was directed to be complied, and an affidavit to be filed by 07.07.2018.

ii). Affidavit of compliance had been filed, enclosing the postal receipts.

iii). A further affidavit indicating whether the notices sent had been served or not had been filed.

iv).Counsel entered appearance on behalf of the defendants on 30.07.2018.

v).The matter was listed before the Court on 22.10.2018.

vi).The matter was also posted before the Assistant Registrar for service of suit summons on 11.06.2019.

vii).The plaintiffs took time for service of suit summons.

viii).The suit summons originally issued had been returned on 05.07.2018 itself.

ix).Thereafter, notice had been issued to the counsel for the defendants on 25.07.2019, enclosing the plaint, affidavit, judges summons and typed set and the same was served on 25.07.2019.

40.I hold the time for filing of written statement commenced only from 25.07.2019.

41.The learned counsel for the plaintiffs insisted that it should be deemed that the defendants had constructive notice since the counsel had entered appearance.

42.In Black's Law Dictionary, 10th edition, the word 'Constructive

Notice' had been defined as follows:

“Constructive Notice: Notice arising by presumption of law from the existence of facts and circumstances that a party had a duty to take notice of, such as a registered deed or a pending lawsuit; notice presumed by law to have been acquired by a person and thus imputed to that person - Also termed legal notice.”

43. In the instant case, the learned counsel for the plaintiffs stated that since counsel had entered appearance, there was a duty to file written statement within the prescribed period. Having failed to file the same, if written statement is filed with condonation of delay then the delay cannot be condoned, since from the date of first hearing date, the learned counsel entered appearance, the delay had crossed well over 120 days.

44. The one aspect which distinguishes this case is that the suit summons had actually not been served. The returned summons are available in the bundle. The Bailiff had returned them without effecting service. The plaintiffs had also not taken up the opportunity of serving

the counsel for the defendants with the suit summons.

45.The Original Side Rules provide for the same under Order IV Rule 7(3), wherein, when an Advocate had entered appearance in Interlocutory proceedings, service of summons in the suit may be made on the Advocate on behalf of the party. It is to be noted that the Rules do not speak of constructive notice or deemed notice. Even if counsel had entered appearance, still the plaintiff had an obligation to serve the suit summons, the only leverage being granted is that service could be effected on the counsel.

46.There is a distinction between the service of notice under Order XXXIX Rule 3(a) of the Code of Civil Procedure, 1908 and service of suit summons. The suit summons as provided under Order IV Rule 5 of the Original Side Rules should be in Form – 13. If the counsel had entered appearance, then the service of summons in the suit could be served on the counsel.

47.In the instant case, the plaint was actually served on the learned

counsel for the defendants only on 25.07.2019. The written statement has to be filed in answer to the averments in the plaint, even though the parties were at lis over the Interlocutory Applications, I hold that a distinction must be presumed with effect to the service of suit summons as against the service of notice in the Interlocutory Applications. If counsel had entered appearance, then the plaintiffs can take advantage of that fact and serve the suit summons on the counsel. The period of commencement of filing of written statement would start only from that date. The filing of vakalat in the suit is of not much significance since the Rules do not contemplate filing of two separate vakalats, one in the Interlocutory Application and another for the suit.

48.In *AIR 2019 SC 2691, SCG Contracts India Pvt. Ltd., V. K.S.Chamankar Infrastructure Pvt. Ltd. and Ors.*, the Hon'ble Supreme Court had stressed that the defendants shall be held to have forfeited their right to file the written statement if they had not filed the same within 120 days from the date of the service of summons. The Hon'ble Supreme Court had made it clear that service of suit summons is the *sine qua non* for commencement of the period of calculation for the filing of the written statement. When that is the pre-condition, then the period for

filing of written statement would commence only on service of suit summons or atleast the plaint.

49. Even in the letter dated 25.07.2019, the learned counsel for the plaintiffs had not stated that an additional copy of the plaint, affidavit, judges summon and typed set are being served. It was actually stated that the said documents are being served as per Order XXXIX Rule 3(a) of the Code of Civil Procedure, 1908 as required. It is to be mentioned that a direction was given to comply with the said stipulation when the ad interim ex-parte injunction was granted on 06.07.2018 more than a year back.

50. The learned Master had recorded service of summons had been completed by order dated 13.08.2019 on examining the Affidavit of Service enclosing the receipt of the letter dated 25.07.2019. The date of service of summons is therefore on 25.07.2019, and as held by the Hon'ble Supreme in *AIR 2019 SC 2691, SCG Contracts India Pvt. Ltd., V. K.S. Chamankar Infrastructure Pvt. Ltd. and Ors.*, from that date the defendants have 30 days time to file the written statement and beyond that a period of 90 days, for reasons to be advanced. The reasons

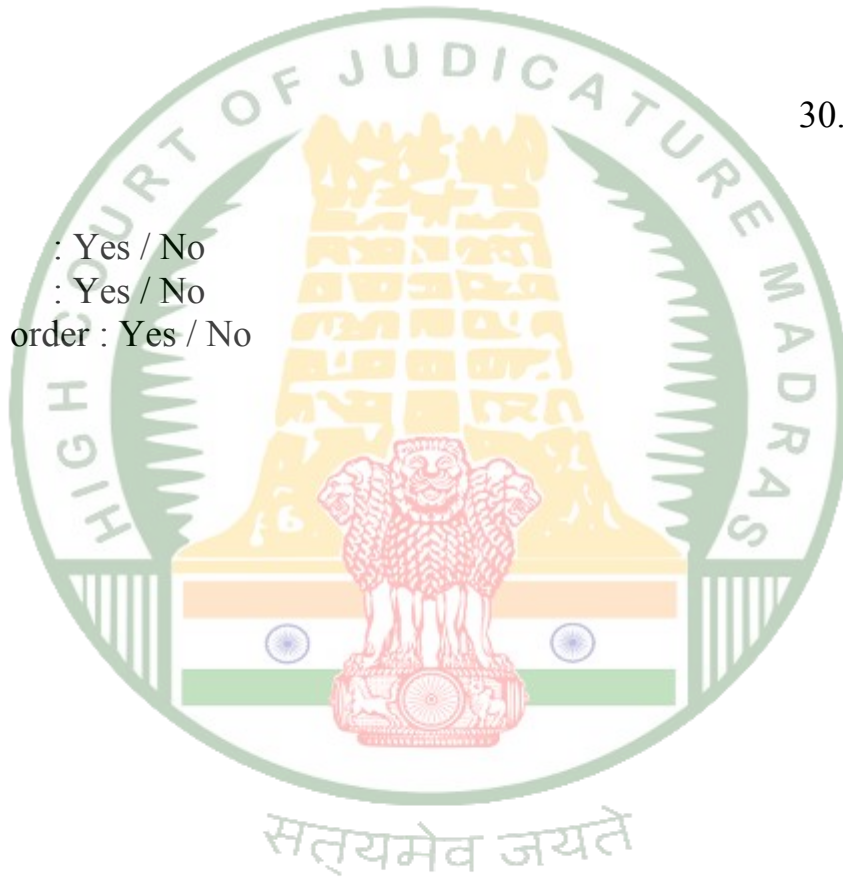
advanced in the instant case are that the plaintiffs had not complied with Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 and that there were criminal cases registered in Cr.No.43 of 2019 against the 1st and 2nd defendants and at the Central Crime Branch, Egmore, a Memorandum of Understanding was executed on 16.02.2019 allegedly under duress and therefore, they were not able to file their written statement.

51.I hold that since the learned Master who is a delegate of the Court had recorded completion of service of suit summons only by order dated 13.08.2019, it has to be held that the defendants had been served with suit summons as required, only on 25.07.2019, when counsel for the plaintiffs served, the relevant papers including plaint and the documents to the counsel for the defendants. I further hold that the reasons stated for delay are acceptable since it is a fact that a criminal complaint was lodged against the defendants, it is a fact that they were summoned for enquiry and it is a fact that Memorandum of Understanding was executed. The alleged circumstances surrounding the execution of the Memorandum of Understanding are not germane to this discussion.

52.In view of these facts, the application is allowed, however, subject to costs of Rs.25,000/- (Rupees Twenty Five Thousand only). The costs are to be paid to the learned counsel for the plaintiffs on or before 16.10.2020.

30.09.2020

smv
Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No



WEB COPY

C.V.KARTHIKEYAN, J.,

smv



Pre-delivery order made in

A.No.8587 of 2019

in

C.S. (Comm. Div.) No.418 of 2018

WEB COPY

30.09.2020