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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 03RD DAY OF JANUARY 2020

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.NO.9509 of 2019

IN

C.S.No.68 of 2016

Mrs.N.Sharadha,
W/o.B.Nanjundan,
Door No.170-D, Terrace House,
Peytons Road, Ootachamund,
Nilgiris 643 001
Tamil Nadu
India

...Plaintiff

-vs-

1. EXERTION TECHNOLOGY PRIVATE LTD.,
NO.17, CLUB ROAD, CHETPET,
CHENNAI-600 031.

2. N.JAYASANKAR
ROYAL GARDEN, BLK4-F1,
OLD NO.12, NEW NO.1,
PARK AVENUE,
KESAVA PERUMAL PURAM, CHENNAI-28.

3. N.JAIKUMAR
NO.72, 1ST FLOOR, 4TH TRUST CROSS STREET,
MANDAVALI, CHENNAI-28.

4. V.S.M.MOHAN
NO.208/424, TTK ROAD,
ALWARPET, CHENNAI-18.

5. G.VIMAL RAJ
NO.18, RANI PADMAVATHIYAR ROAD,
GOPALAPURAM, CHENNAI-86.

..DEFENDANTS

A.NO.9509 OF 2019:

1. EXERTION TECHNOLOGY PRIVATE LTD.,
NO.17, CLUB ROAD, CHETPET,
CHENNAI-600 031.



OLD NO.12, NEW NO.1,
PARK AVENUE,
KESAVA PERUMAL PURAM, CHENNAI-28.

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NO.208/424, TTK ROAD,
ALWARPET, CHENNAI-18.

4. G.VIMAL RAJ
NO.18, RANI PADMAVATHIYAR ROAD,
GOPALAPURAM, CHENNAI-86.

..Applicants/DEFENDANTS1,2,4 and 5

-vs-

1. Mrs.N.Sharadha,
W/o.B.Nanjundan,
Door No.170-D, Terrace House,
Peytons Road, Ootachamund,
Nilgiris 643 001

...1st Respondent/Plaintiff

2. N.JAIKUMAR
NO.72, 1ST FLOOR, 4TH TRUST CROSS STREET,
MANDAVALI, CHENNAI-28.

..2nd Respondent/3rd Defendant

Application praying that this Honble Court be pleased to condone the delay of 806 days in filing the Written Statement of the Defendants 1,2,4 and 5 in the above suit.

This Application coming on this day before this court for hearing the court made the following order:

This application is filed to condone the delay of 806 days in filing the written statement of the defendants 1,2,4 and 5.

2. I heard the learned counsel for the applicants and the learned counsel for the respondents.

3. The learned counsel for the applicants submitted that the delay in filing the written statement is on account of the fact that the applicants were contesting several interlocutory proceedings including the proceeding wherein the order of arrest was issued. He further submitted that those orders were carried in appeal before the Division Bench. He also pointed out that two

properties were offered as security for the suit claim and on that basis, OS Appeal was allowed and the warrant issued



by the learned Single Judge was recalled. He further submitted that an application was filed for the reference of the dispute to the arbitration, which was subsequently withdrawn. All these factors resulted in the delay in filing the written statement.

4. In response, the learned counsel for the respondents submitted that the applicants could have easily filed the written statement, when the applicants contested these interlocutory proceedings. He further submitted that the Code of Civil Procedure was amended and that an outer limit of 120 days has been stipulated for the filing of the written statement. In support of his submission, he relied upon the Judgment of the Supreme Court in **SCG Contract India Private Ltd., vs. K.S.Chamankar Infrastructure Pvt. Ltd., reported in 2019 (2) CTC 294** and in particular paragraph 8 of the said judgment, wherein the amended provisions of the CPC are extracted.

5. I considered the submissions of the learned counsel and also examined the affidavit and the counter affidavit. As regards the judgment of the Supreme Court, it is in the context of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 and the amendments made to the CPC, as a consequence thereof, in the context of proceedings before a Commercial Court or a Commercial Division. Therefore, the said judgment does not apply to this case, which pertains to non commercial causes.

6. Upon perusal of the averments in the affidavit in support of the application, I find that the applicants have set out the fact that various interlocutory proceedings were contested including the proceeding relating to an order of arrest which was also carried in appeal before the Division bench. Therefore, I am of the view that the applicants have made out sufficient cause to condone the delay. Accordingly, this application is allowed and the delay of 806 days in filing the written statement of the



defendants 1,2,4 and 5 is condoned. The learned counsel for the respondents points out that the third defendant is yet to file the written statement.

7. List under the caption "undefended Board" on 22.01.2020.

Sd/.S.K.R.J.

03.01.2020

//Certified to be a true copy//
Dated this the day of 2020.

SU/07.01.2020

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.