A.No.9511 of 2019
and A.No.254 of 2020
in C.S.No.1173 of 2009

P.T. ASHA, J,

A.No.9511 of 2019 and A.No.254 of 2020 are filed by the 1st and 2nd defendant, respectively. The 1st defendant seeks to have a delay of 3278 days for filing his Written Statement condoned and the 2nd defendant seeks to have the delay of 3309 days in filing the adoption memo to adopt the Written Statement of the 1st defendant condoned. The reasons for the delay are the same and therefore, this Court is passing a Common Order.

2.The respective applicants would contend that they have been served with the summons in the suit on 02.11.2010. Thereafter, the respondents 1 and 2/plaintiffs had filed an amendment petition in A.No.3121 of 2012 to amend the Plaint to include additional pleadings and an alternative relief as also a substitution of the relief. The application which was dismissed was later allowed by the Division Bench in the appeal O.S.A.No.314 of 2013 filed by the respondents 1 and 2 by an order dated 11.01.2017. The amendment was carried out and the amended copy of the Plaint was filed on 07.04.2017.

3.The Written Statement of the 1st defendant has been filed on 05.12.2019 along with the application to condone the delay. Likewise, the 2nd defendant has also filed the adoption memo on 09.12.2019. The applicants would submit that the delay is neither wilful nor wanton but for the reason stated above. He would also contend that the amendment application is itself filed only to increase the suit valuation and retain the suit on the file of this Court.

4.The 1st and 2nd respondent have filed common counter inter alia contending that the suit properties were attached by the State Government on 23.02.2010 invoking the provisions of the Tamil Nadu Protection of Interest of Depositors Act (In Financial Establishments) Act, 1997, TNPID Act for the sake of brevity.

5.The applicant and other were arrayed as accused in the complaint from the depositors of M/s.Suprabath Chits and Investments Private Limited. The Competent Authority had also filed O.A.No.85 of 2010 to confirm the attachment already made under the provisions of the TNPID

Act. The respondents 1 and 2 had sought to implead themselves into these proceedings by filing I.A.No.55 of 2015. This application was dismissed by order dated 23.03.2016 and the respondents 1 and 2 had filed C.M.A.No.1095 of 2016 before this Court. This Court had disposed of the appeal with a direction to the learned Special Judge under the TNPID Act to take up O.A.No.70 of 2010 prior to disposal of O.A.No.85 of 2010. After trial the order of attachment insofar as the suit properties were concerned was raised. The respondents would contend that the applicant was actively participating in these proceedings till they were set *ex parte.*

6.They would further contend that despite being served on 02.11.2010 the applicants have not taken any steps to file their Written Statement and the amendment application was filed only in the year 2012. The appeal was allowed in the year 2017 and the amended copy of the Plaint was filed as early as on 06.04.2017 and there is no convincing reason for the delay.

7.Mr.Paramananthan appearing for the applicant in A.No.9511 of 2019 would reiterate the contentions stated in the affidavit filed in support of the application and submit that the applicants by amending the relief has introduced a time barred relief. The counsel would submit that the applicants have a substantial defense to put forward and if the Written statement is not taken on file they would suffer serious prejudice and hardship.

8.Mr.R.Venkata Varathan appearing for the applicant in A.No.254 of 2020 would adopt the said arguments.

9.Mr.Danraj appearing for the respondents 1 and 2 would vehemently oppose the application he would submit that despite being aware of the suit right from the year 2010 and participating in the TNPID proceedings the applicants have not chosen to file the Written Statement in time. The learned counsel would submit that the filing of the amendment was only in the year 2012 and there is no explanation for the non-filing between the period November 2010 to 2012 when the amendment application was filed. Likewise no convincing reasons have been given for the non filing between the period 06.04.2011 to 05.12.2019 and 09.12.2019 respectively. He would submit that the delay is deliberate and made with the sole view to protract the proceedings. He would therefore seek for a dismissal.

10.Having heard the arguments of the learned counsel and perusing the pleadings, it appears that the plaintiff had originally filed the suit for a declaration that the deed of revocation of the general power of attorney dated 28.05.2009 as null and void and for a mandatory injunction restraining the suit was valued at a sum of Rs.10,01,000/-. By virtue of the amendment an alternative prayer for directing the defendants to execute and register the necessary deed of Conveyance and for a mandatory injunction to execute and register necessary rectification Deeds. By reason of this amendment the suit value has been enhanced to a sum of Rs.1,11,00,000/-. The applicants have contended that this is nothing but an an astute drafting to retain the suit within the jurisdiction of this Court. The applicants have questioned the jurisdiction of this Court. Further, the alternative relief has been included only in the year 2012 and is tine-barred even when the suit was originally filed. Likewise, the prayer for mandatory injunction introduced by reason of the amendment. A substantial defense of want of cause of action has also been raised. That apart, the applicants also have a substantial defense to the merits of the case. In these circumstances, interest of justice require that the applications be ordered. However the delay on the part of the applicants are also enormous and they have to therefore be put of terms. Therefore, the petition to condone the delay in filing the Written Statement and the adoption memo is condoned on condition that the applicants in A.No.9511 of 2019 be directed to pay costs of Rs.20,000/- (Rupees twenty thousand only) to the learned counsel for the respondents 1 and 2 on or before 14.10.2020.

Post on 16.10.2020 for reporting compliance.

05.10.2020

mps

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mps

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