

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.04.2021

Pronounced on: 19.04.2021

Coram::

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN

A.Nos.650 & 651 of 2020
& A.No.668 of 2021
in C.S.(Comm. Div). No.62 of 2020

M/s. A.T.M. Constructions (P) Ltd.,

Represented by its Director, Faiz Mohameed,
No.288, Lloyds Road, Royapettah,
Chennai – 600 014.

... Applicant/Plaintiff
in A.Nos.650 & 651 of 2020

/versus/

1. M/s. Bharath Petroleum Corporations Ltd.,

having its registered office at Bharath Bhavan,
No.4 & 6, Currimbhoy Road, Ballard Estate, Mumbai – 400 028.
Represented by its Senior Manager – Legal (South),
No.1, Rangamohan Gardens, No.115, Main Road,
Anna Nagar, Chennai – 600 040.

2. M/s.Bharath Petroleum Corporation Ltd.,

Represented by its Territory Manager (Retail),
No.35, Vaidyanathan Street,
Tondiarpet, Chennai – 600 081.

... Respondents/Defendants.
in A.Nos.650 & 651 of 2020

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Tondiarpet, Chennai – 600 081.

... Applicants/Defendants
in A.No.668 of 2021

/versus/

M/s. A.T.M. Constructions (P) Ltd.,
Represented by its Director, Faiz Mohameed,
No.288, Lloyds Road, Royapettah,
Chennai – 600 014.

... Respondent/Plaintiff
in A.No.668 of 2021

Prayer in A.No.650 of 2020:- Application is filed under Order XIV and Rule 8 of Original Side Rules and read with Order XXXVIII Rule 2 r/w Section 151 of C.P.C:-

To direct the respondent/defendant to deposit on or before 5th of every succeeding calender month a sum of Rs.30,50,000/- (Rupees Thirty Lakhs and fifty thousand only) as future damages payable from 01.01.2020 in the credit of main suit before this Hon'ble High Court.

Prayer in A.No.651 of 2020:- Application is filed under Order XIV and Rule 8 of Original Side Rules and read with Order XXXVIII Rule 5 r/w Section 151 of C.P.C:-

To pass interim order directing the respondents/defendants to furnish security to the satisfaction of the claim of liquidated damages of Rs.128.90,00,000.00 (Rupees One Hundred and Twenty eight crores and ninety

lakhs only) as prayed for in the suit either by way of bank guarantee or deposit of title deeds pertaining to any immovable properties of the respondents/defendants equivalent to the suit claim before this Hon'ble Court.

Prayer in A.No.668 of 2021:-Application is filed under Order XIV and Rule 8 of Original Side Rules read with Order VIII Rule 1 and Section 151 of the Code of Civil Procedure, 1908 and Section 16 of the Commercial Courts Act, 2015.

To condone the delay of 187 days in filing the Written Statement in C.S.(Comm).No.62 of 2020.

For Applicant : Mr.R.Balachandran

For Respondents : Mr.Krishna Srinivasan,
for M/s.S.Ramasubramaniam Associates

COMMON ORDER

The plaintiff is the owner of the immovable property bearing door No.282, (Old No.1/87 L), Mount Road (Anna Salai), Teynampet, Chennai, admeasuring a total extend of four grounds and 2330 sq.ft = 11,930 sq.ft, which is the subject matter of the suit.

2. The defendant is in occupation of the suit property. The suit is filed for recovery of liquidated damages of Rs.128,90,00,000/- along with interest at the rate of 12% per annum from 01.01.2020 till the date of realisation and for future damages at the rate of Rs.30,50,000/- per month from 01.01.2020 till the date of handing over the vacant possession of the suit property.

3. The plaintiff has filed two applications one application No.650 of 2020, to direct the defendants to deposit Rs.30,50,000/- on or before 5th of every succeeding calendar month as future damages and another application No.651 of 2020 to pass interim order directing the defendant to furnish security to the satisfaction of the claim of liquidated damages of Rs.128,90,00,000/- either by way of bank guarantee or deposit of title deeds pertaining to any immovable properties of the defendant.

4. The subject matter of the suit determined as commercial dispute. The defendants received the suit summons on 04.03.2020. As per Order VII Rule 1 of C.P.C., the written statement ought to have been filed on or before 03.04.2020. Having not filed the written statement within the limitation, the Applicants/defendants had filed application No.668 of 2020 to condone the delay

of 187 days in filing the written statement.

5. The facts leading to these three applications in short is that the suit property originally owned by T.Padmanabhan, T.Gopinath and T.Sethuraman jointly. They entered into lease agreement with M/s.Burma Shell Oil Storage and Distribution Company of India on 01.01.1958, for a period of 20 years. The suit land used for erecting pump service and filling station for storage of Petrol and diesel. As per the lease agreement, on expiry of the lease period a right to renew for further period of 20 years was vest with leasee. Before expiry of the first lease period, M/s.Burma Shell Oil Company was acquired by the Government of India in the year 1976 and become M/s.Bharath Petroleum Corporation Limited.

6. Meanwhile, the suit property was mortgage by the land owner for the loan availed from M/s.Egmore Benefit Society. In view of default, the property was brought to auction sale and one Mrs.Bharwani purchased the property in the auction sale and the property was conveyed to her vide sale deed dated 24.06.1978.

7. After the expiry of 20 years lease period on 31.12.1977, the leasee M/s.Bharath Petroleum Corporation Limited vide letter dated 06.07.1978 sought for renewal of lease for further period of 20 years as per the terms of the agreement. However, the lessor was not interested in renewing the lease. There was exchange of lawyer notice between them, at last by invoking the statutory right under the Burma Shell Acquisition of Undertaking in India Act, the lease was renewed for further period of 20 years commencing from 01.01.1978. Thereafter Mrs.S.Bharwani sold the property to the present plaintiff vide sale deed dated 31.07.1997. The extended lease period of 20 years meanwhile expired on 31.12.1997. The plaintiff, on expiry of lease period sought back the vacant possession of the land. The defendant though attorned the tenancy in favour of the plaintiff, expressed their intention to get the lease renewed for further period of 20 years from 01.01.1998 and made a request on 09.01.1998 to the plaintiff for extension of lease. The plaintiff not agreeable to extend the lease, after issuing quit notice filed O.S.No.711 of 2006 before the III Assistant City Civil Court, Chennai, against the defendant for delivery of vacant possession of the suit property. The defendants filed I.A.No.6009 of 2006 under Section 9 of the Tamil Nadu City Tenants Protection Act and sought for permission to purchase the suit property from the plaintiff. The Trial Court dismissed the I.A.No.6009 of 2009

filed by the defendants holding that the defendant is not entitled to invoke the provision of City Tenants Protection Act.

8. Aggrieved by the said order of dismissal, the defendants preferred appeal before the III Additional City Civil Judge, Chennai, in C.M.A.No.20 of 2010. The said appeal was dismissed as devoid of merits on 15.02.2010. Then again, the defendant preferred Revision before the High Court in C.R.P.(PD).No.610 of 2011. The said revision was also dismissed by the High Court, on 09.01.2012. The defendant took up the matter to Hon'ble Supreme Court and filed S.L.P.No.17435 of 2012 challenging the concurrent filing of the Courts below dismissing the petition filed under Section 9 of Tamil Nadu City Tenant Protection Act. The said S.L.P.No.17435 of 2012 (C.A.No.769 of 2020) was also dismissed on 28.01.2020. Meanwhile, the suit O.S.No.711 of 2006 filed by the plaintiff for delivery of vacant possession was allowed on 30.10.2010. The defendant filed appeal in A.S.No.361 of 2010 before the IV Additional City Civil Court. The said appeal was dismissed on 08.01.2021.

9. Aggrieved by the concurrent finding and decree of eviction, the defendant preferred S.A.No.185 of 2011 before this High Court and same is

pending.

10. The Learned Counsel appearing for the appellant in S.A.No.185 of 2011 represented that they have preferred review petition before the Hon'ble Supreme Court against the order dated 28.01.2020 in C.A.No.769 of 2020. Considering the said representation this Court had permitted the defendants herein to continue to run the Petrol bunk in the suit premises till the disposal of the review petition pending before the Hon'ble Supreme Court. As per-condition for the protection from eviction, the defendant herein had offered to deposit Rs.1 crore and also pay a sum of Rs.3.5 lakhs as rent per month, from march 2021 till the date of disposal of their review petition. The plaintiff had objected that the defendant has not paid even a single rupee for the past 23 years and the arrears had crossed Rs.100 crores. Considering the submission made by the parties on 26.02.2021 this Court had granted interim stay till the disposal of the Review Petition Nos.1063 and 1067 of 2020 pending before the Hon'ble Supreme Court, on condition to deposit a sum of Rs.2 crore to the credit of the respondent, within a period of six weeks and to deposit a sum of Rs.3.5 lakhs on or before 5th day of every month from the month of march 2021. This order was passed without prejudice to the right of the plaintiff herein in their Application Nos.650 and 651

of 2020 in C.S.No.62 of 2020. Under the above said circumstances, the defendant in the present suit, had filed written statement after expiry of the period of limitation. In the above said factual background, the three applications are taken up for consideration.

11. The Learned Counsel appearing for the defendant herein would submit that the right of the plaintiff is protected by way of the interim order passed in C.M.P.No.3758 of 2011 in S.A.No.185 of 2021 dated 26.02.2021 and no further order required in Applications Nos.650 and 651 of 2020 and the delay of 187 days in filing the written statement has to be condoned since, the period of limitation is saved by the order passed by the Hon'ble Supreme Court in suo motu W.P.(Civil).No.3 of 2020 dated 23.03.2020 which was further clarified by the Hon'ble Supreme Court in its subsequent orders. According to the Learned Counsel for the defendant, the suit summon was received by the defendants on 04.03.2020 as per the provisions of Commercial Court Act and amended Order VIII Rule 1 of C.P.C., the written statement has to be filed within 30 days from the receipt of the suit summons i.e., by 04.04.2020. Delay upon 90 days can be condoned for reasons recorded and on payment of such costs. Beyond 120 days, the defendants right to file written statement gets forfeited.

12. In the present case, the 30 days limitation period expired on 04.04.2020 and 120 days time limit expired on 02.07.2020. However, in view of moratorium imposed by the Hon'ble Supreme Court regarding limitation vide its order dated 23.03.2020 through there is delay of 187 days in filing the written statement, the defendant right to file the written statement is not forfeited.

13. In response to the above submission. The Learned Counsel appearing for the plaintiff would submit that the defendant wants to misuse the order passed by the Hon'ble Supreme Court in suo motu W.P.(C).No.3 of 2020 dated 23.03.2020 which was issued invoking Article 142 of the Constitution, to do substantial justice for the litigants who were unable to access the Court due to pandemic. In this case, the defendant was all throughout had access to the Court and participating in the proceedings.

14. The Hon'ble Supreme Court taken suo motu cognizance of the situation arising out of the challenge faced by the Country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the Country in filing their petitions/applications/suits/appeal/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special

Laws and passed the following order in Suo Motu Writ Petition (Civil) No.3 of 2020.

ORDER

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

16. As far as, the Madras High Court is concerned during the pandemic period but for initial few weeks the difficulty or impediment for the parties to file their pleadings was substantially mitigated and facility was provided for the parties to file pleadings either through e-mail or in the drop box provided in the High Court Campus. Even during the most difficulty period and peak of Pandemic, this Court was functioning with certain restrictions and facilitated the litigants to furnish soft copy through e-mail or hard copy of the case papers to the Registry. Notification No.113/2020, dated 17.04.2020 and Notification No.143/2020 dated 13.07.2020 issued by the High Court is sufficient record to indicate the factual situation in the Principal Bench of Madras High Court during the peak of Pandemic.

NOTIFICATION NO.113/2020

In Furtherance of the efficacious steps already taken by the Hon'ble The Chief Justice of Madras High Court to combat the spread of Corona Virus (COVID- 19) and in continuation to the changes made in the Sitting Arrangement made vide Notification No. 110, 111 & 112 of 2020 dated 23.03.2020, 12.04.2020 & 17.04.2020 respectively and the restrictions imposed on function of High Court confining only to extremely urgent matters through Video Conferencing or otherwise vide Circular dated 24.03.2020 and 12.04.2020 in ROC.No.1363/2020/RG, the Hon'ble the Chief Justice of this High Court has been pleased to issue the following further directions with reference to the mode of filing and hearing of cases in the Principal Seat at Madras:-

1. In view of the inconvenience to be faced by the lawyers, litigant etc. in physically attending court proceeding due to lockdown, court proceeding of extreme urgent matters shall be conducted via video-conferencing or otherwise through the mode which is compatible to the Registry from time to time.

2. For all matters involving extreme urgency, the Advocate/Party is first required to send the scanned copy of the Petition/Application/Grounds of appeal along with the requisite documents as filed physically in the Registry in support of their case, the scanned copy of Memo containing not more than 200 words citing attention to be required to hear the case during this exigency and the precisely made

Written Arguments in PDF Format to the email [ID- m.jothiraman@aij.gov.in](mailto:m.jothiraman@aij.gov.in) and to the email ID of the Designated Officer concerned of the Registry mentioned as follows:

<i>For Writ Jurisdiction</i>	<i>Joint Registrar (Writ)</i>	jrwritmhc@gmail.com
<i>For Original Side cases</i>	<i>Joint Registrar (Original Side)</i>	jroriginalsidemhc@gmail.com
<i>For Appellate Side cases</i>	<i>Joint Registrar (Appellate Side)</i>	jrappealatesidemhc@gmail.com
<i>For Criminal Side cases</i>	<i>Deputy Registrar (Criminal Side)</i>	drcrlside@gmail.com

3. If Advocate/Party intend to file Petition/ Appeal /Application against Union or State during this exigency, the Carbon Copy (CC) of the same is required to be marked to the respective Law Officers in the following email-ID:

<i>For Civil and Writ Petitions against Government of Tamil Nadu</i>	jpkkjd@yahoo.co.in
<i>For Civil and Writ Petitions against Union of India</i>	asgisouth@gmail.com
<i>For Criminal Cases against Government of Tamilnadu</i>	ppofficecovid19@gmail.com
<i>For all cases against Government of Puducherry</i>	pp-highcourt.py@gov.in

4. The said Memo shall inter-alia clearly contain the case-details, contact-details of the Advocate/Party including e-mail id, mobile number and alternate number(s), Enrolment number and residence/office address with Pin Code. The said Memo shall also contain the undertaking that they will abide with the instructions given by the Information Technology Wing of the Registry for effective functioning of Court through Video Conferencing.

5. The Court fee and other charges, if payable to the Petition/Application/Appeal so filed, shall be remitted through E-stamping facility by utilizing the services of STOCK HOLDING CORPORATION OF INDIA LIMITED (SHCIL) through on-line mode or otherwise and the scanned acknowledgment receipt for the said remittance shall be sent along with the copy of the Petition/Application/Appeal.

6. Advocates/Parties are required to remit Court fee and other charges that are payable to the Appeals/Petitions/Applications so far filed through email and Registered by the Registry ie., from 26.03.2020 to 17.04.2020 within the period of two weeks from the date of Functioning of Regular Court.

7. Upon receipt of the case papers along with the Memo, the same shall be placed before the Hon'ble Court concerned through e-mode, for obtaining permission by the Registry. If the Hon'ble Court concerned so directs, then only the case will be taken up on file, otherwise, the case shall be deemed to be considered as non-emergent case.

8. Upon receipt of the permission from the Hon'ble Court concerned for entertaining the case, the same shall be intimated to the Advocate/Party, if the Hon'ble Court considers as necessary, by the Designated Officer by return of email or by other means of communication as per the directions of the Hon'ble Court concerned.

9. If the Hon'ble Court insists for the hard copy of the case papers, the Advocate/Party shall make necessary arrangements to furnish hard copy of the case papers that are sent through e-mail. The said hard copy of the case papers shall be handover to the Registry in the Pass Counters near Dr.Ambedkar Statue in the High Court campus from 10.30 a.m. to 1.00 p.m. during Court working days.

10. The Registry would act only upon such emails that are sent to the email ID as specified above, and reply would be sent by the Designated Officer concerned, only when the Hon'ble Court so directs, to the same email ID from where the request would have come or by other means of communication as per the directions of the Hon'ble Court concerned.

11. Instructions for participating Court Proceedings through Video Conferencing facility will be intimated to the Advocates/Parties by the Registry.

//BY ORDER OF THE HON'BLE THE CHIEF JUSTICE//

High Court, Madras

REGISTRAR(JUDICIAL)

Dated: 17.04.2020

17. Subsequently, the Registry of this Hon'ble High Court in Notification No.143/2020, dated 13.07.2020 issued the following directions.

Notification No.143/2020

In supersession to the Notification No.134/2020 dated 03.07.2020 and in pursuance of the Resolution of the Hon'ble Administrative Committee dated 12.07.2020 wherein options are given to the Advocates/Parties-in-Person to select mode of filing of case papers either through email or physically in the High Court premises, the following instructions are issued and to be implemented with effect from 14.07.2020:

Instructions for Email Filing:

1. Advocate/Party-in-Person who have chosen to file scanned case papers through email mode, are required to comply all the requirements necessitated in Notification Nos.113/2020 and 122/2020 dated 17.04.2020 and 31.05.2020 respectively.

2. Upon receipt of the case papers through e-mail, the examiners of the Registry will scrutinize the same and if found otherwise in order, then before assigning case number, the Registry will inform the Advocate/Party-in-Person through e-mail for furnishing hard copy of case papers.

3. If case papers found defective, then the same will be intimated to Advocate/ Party-in-Person through e-mail only and after curing the defects pointed out by the Registry, the Advocate/Party-in-Person shall send clean copy of only such

scanned case papers through e-mail. Thereafter, before assigning case number, the Registry will inform the Advocate/Party-in-person through e-mail to furnish hard copy of the case papers.

4. Upon intimation from the Registry for filing hard copy of case papers, Advocate/Party-in-Person are required to file the hard copy of case papers by clearly mentioning the mode of filing ie., “E-MAIL FILING” in the docket sheet. In addition to the above, Advocate/Party-in-person are required to file a memo containing case details that are sent to Registry through e-mail. The aforesaid case papers shall be filed in the designated Counter installed near South Gate (Gate No.7) of the Madras High Court campus with a separate Drop Boxes kept for collecting case papers pertaining to all branches i.e., Appellate Side, Writ, Criminal Side and Original Side. The said Counter shall function from 10.30 a.m. to 1.30 a.m. on all working days.

Instructions For Physical Filing:

5. Advocate/Party-in-Person who have chosen to file case papers physically, are required to file the said case papers in the drop box as provided in the High Court campus. Advocate/Party-in-Person shall clearly mention the mode of filing ie., “PHYSICAL FILING” in the docket sheet of case papers and also mention their mobile number and e-mail id in the docket sheets.

6. After due fumigation process, the Registry will scrutinize the case papers so received and if found otherwise

in order, then the Registry will proceed further.

7. If case papers found defective, then the same will be intimated to the Advocate/Party-in-Person through email or through other means of communication. After curing the defect(s) pointed out by the Registry, the clean copy of such paper(s)/document(s) alone is/are required to be submitted at the very same filing counter. In addition to the above, Advocate/Party-in-Person shall submit a memo containing an undertaking that they will take steps to rectify the corrections required to be made in the original case papers as such found in clean copy of case papers after resuming regular court functioning.

General Instructions:

8. The Case papers filed in the drop box, will be taken up for further course of action only after a day of quarantine, in order to give sufficient time for COVID – 19 virus to extinct.

9. Advocate/Party-in-person may continue to exercise option to file Bail Applications through e-filing mode by following the instructions issue vide Notification in ROC.No.30036-A/2020/e-court, dated 20.04.2020.

10. No hard copies/case papers shall be returned physically under any circumstances during this COVID-19 lockdown period or till the normal case filing is restored except with the leave of the Hon'ble Court upon request made.

11. The Advocate/Party-in-Person who are coming to file case papers shall have access upto the Counter installed near South Gate (Gate No.7) of Madras High Court Campus.

12. The attendees to the filing counter shall adhere to all necessary guidelines issued by the Government of India and the Government of Tamil Nadu on the restrictions to prevent from COVID-19 viral infection and also ensure that the bearer of the case paper shall not be the resident of hot spot area/containment zone notified by the concerned local body.

13. The attendees are requested to give fullest cooperation to the security personnel deployed near the filing counter in the High Court campus for smooth functioning of the filing facility.

//BY ORDER OF THE HON'BLE THE CHIEF JUSTICE//

High Court, Madras

Dated: 13.07.2020

Registrar (Judicial)

18. Therefore, at the outset, the reason for which the limitation was extended by the Hon'ble Supreme Court in suo motu W.P.(C).No.3 of 2020 by letter may apply to defendant but not on spirit. Particularly, when the defendant had participated in the proceedings during this period through video conference facility and had filed a petition under Order VII Rule 11 (d) of C.P.C to reject the plaint as the suit is barred under Order II Rule 3 & 4 of C.P.C. The notes paper of

this case indicates that on 14.07.2020 when the matter was heard by this Court to hear the Application Nos.650 and 651 of 2020, the Learned Counsel for the plaintiff as well as the defendant were present through video conference and the Court has recorded that as on date the defendant have not filed the written statement. The Court adjourned the case, directing the defendant to examine the provisions of Commercial Courts Act, regarding the time limit prescribed for filing the written statement and to take appropriate decision for filing the written statement. This Court, taking note of the fact that the defendant has not filed the counters in the A.Nos.650 and 651 of 2020 had adjourned the matter on 27.07.2020 with the following directions.

“For filing counter and for taking a decision for filing written statement, list the matter once again on 27.07.2020. No further time will be granted for filing counter.”

19. When the matter was taken up on 27.07.2020, the defendant has reported to the Court that they have filed an application seeking rejection of the plaint and to give a finding on determination of jurisdiction. This Court has adjourned the matter to 07.08.2020 for the Registry to verify whether any

application is received and numbered, if so, list the same for hearing. The application to reject the plaint filed by the defendant was taken on file numbered as A.No.1633 of 2020 thereafter, matter was adjourned for filing counter and after hearing the Learned counsels on 09.12.2020, order in the application was reserved and pronounced on 07.01.2021. The Application (A.No.1633 of 2020) to reject the plaint was dismissed with cost of Rs.1,00,000/-. While the defendant had been participating in the proceedings effectively atleast since 14.07.2020 and been cautioned about the time limit prescribed for filing written statement, the defendant had chosen to file the written statement only on 08.10.2020. From the Registry notes, this Court finds that the suit summons was served on 1st defendant on 17.03.2020. The 2nd defendant received the summons on 04.03.2020. The time prescribed to filing written statements under Order VIII Rule 1 of C.P.C., is 30 days and further period of 90 days is permitted if the Court is satisfied with the reason for delay. On expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record. It is a mandatory provisions which is non-negotiable.

20. The defendants wants to take advantage of the order passed by the Hon'ble Supreme Court in suo motu W.P.(C).No.3 of 2020. The defendant claim that the State of Tamil Nadu continued to be under Lockdown on account of pandemic for the said reason, the applicant could not file the written statement within a limitation period of 120 days prescribed under the Commercial Courts Act and the delay is neither wilful nor wanton.

21. On examining the above averments, this Court finds that the State of Tamil Nadu was not under complete Lockdown on account of pandemic as on 02.07.2020. More particularly, as per notification No.143 of 2020 dated 13.07.2020 the Registry of the High Court was functioning and permitting the parties to file their documents either physically or through e-mail and appear through video conferencing. As far as this defendant is concerned, it is obvious from the record that the defendant has been participating the proceedings during this period had filed this Application No.1633 of 2020 and other documents contested the matter through Counsel. It is proved beyond any pale of doubt there was no difficulty for the defendant to file the written statement within the time prescribed through e-mail or drop the hard copy in the drop box provided within the Court premises after 14.07.2020.

22. This Court take note of the fact that the defendant at one breath want to reject the plaint and had filed a petition to that effect on 27.07.2020. At the same time, wants to condone the delay beyond the statutory limit on the ground that he was prevented from filing the written statement due to pandemic situation. It is a clear attempt to abuse the benevolent order of the Hon'ble Supreme Court to circumvent the statutory provisions. If this application is allowed and delay is condoned, it will amount to aiding a wilful defaulter and lead to complete injustice.

23. The Hon'ble Supreme Court in ***SCG Contracts (India) Private Limited -vs- K.S.Chamankar Infrastructure Private Limited and others*** reported in ***(2019) 12 SCC 210***, has held that the Court dealing suit under Commercial Court Act have no power to extend the time for filing written statement after expiry of 120 days from the date of receipt of the summons. The order of the Hon'ble Supreme Court in suo motu W.P.(C).No.3 of 2020, dated 23.03.2020 which intended to obviate difficulty that faced by the litigants across the Country in filing the petitions, suits, applications, plaint, appeals, all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws is not applicable to the defendant herein since the defendant

demonstrable had no difficulty to file the written statement in time. There was no difficulty for the defendant to get access to the Court which needed to be obviated.

24. This Court is of the view that the wilful default of the defendant in not filing the written statement within time prescribed though he had all wherewithal and opportunity to file will obviously lead to forfeiture of his right to file written statement on expiry of the limitation period.

25. Recently when Hon'ble Supreme Court had occasion to decide the issue regarding limitation in the light of its suo motu order dated 23.03.2020 in ***Sagufa Ahmed -vs- Upper Assam Plywood Products Private Limited*** reported in ***2021 (2) SCC 317*** vide order dated 18.09.2020 by Three Judges Bench, the intention of the Court for passing the suo motu order explained in following words:-

“17. But we do not think that the appellants can take refuge under the above order. What was extended by the above order of this Court was only the period of limitation and not the period upto which delay can be condoned in exercise of discretion conferred by the statute. The above order passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the

lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is vigilantibus et Non Dormientibus Jura Subveniunt which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.”

26. This Court firmly believe that the benevolence shown by the Apex Court to extent limitation in view of the pandemic situation is to obviate difficulty faced by litigants who were really unable to participate in the proceedings on account of Covid-19 virus and resultant difficulty that may be faced.

27. The spirit behind the *suo motu* order passed under Article 142 of the Constitution, cannot be allowed to be abused by mighty corporate, which had at its disposal all wherewithal to contest the suit for filing petition to reject the plaint and further appeal against the dismissal of the said petition all during the pandemic period but consciously not filing the written statement within the time prescribed.

28. To be also noted that this Court during the month of July 2020 (14.07.2020) requested the defendant to ensure filing written statement by taking note of the period of limitation. Notwithstanding the gentle reminder by this Court, the defendant had filed the written statement only in the month of October (08.10.2020). In the affidavit to condone the delay, there is no whisper how Covid-19 prevented the defendant from filing the written statement within the time prescribed. The relevant paragraph of the affidavit filed in support of condone delay petition reads as below:-

2. I submit that the respondent has filed the above suit praying for a decree of damages to the tune of Rs.128,90,00,000/- as well as future damages of Rs.30,50,000/- per month. I submit that the summons in the suit were served on the applicants on 04.03.2020. The applicants entered appearance through their counsel by filing the Vakalatnama. However, on 25th March 2020 onwards a nationwide lockdown was imposed on account of COVID-19. This lockdown was extended on various dates over a period of 6 months bringing to a complete halt, the normal life.

3. Taking note of the extremely critical situation, I am informed that the Hon'ble Supreme Court of India passed an omnibus order on 23.03.2020 extending the period of

Limitation under all laws till further orders. Thereafter, on 10.07.2020, this Order was modified to a limited extent in respect of proceedings initiated under the Arbitration & Conciliation Act, more particularly Section 29-A as well as for pre-institution mediation and settlement under Section 12-A of the Commercial Courts Act. By this order dated 10.07.2020, the Hon'ble Supreme Court was pleased to extend the period of limitation from the time when the lockdown is lifted plus 45 days thereafter. No further orders have been passed by the Hon'ble Supreme Court in this regard. It is also necessary to mention here that though the Government has relaxed certain conditions and permitted commercial and other activities to resume, the State of Tamil Nadu has extended the lockdown till 31st October 2020.

4. I submit that under the Commercial Court Act, the Defendant is required to file the written statement within a period of 30 days from the date of service of summons and if it fails to do so, shall not file the same beyond a period of 120 days from the date of service of summons. I submit that the summons was served on the applicants on 04.03.2020. The period of 120 days ended on 02.07.2020. On the said date, the State of Tamil Nadu continued to be under a lockdown on account of the pandemic. For the said reason, the applicants could not filed their written statement within the period of 120 days prescribed under the Commercial Courts Act.

29. For no valid reason mentioned in the affidavit except mentioning the *suo motu* order issued to obviate the litigants who had really suffered difficulty in reaching the Court. The said benevolence cannot be extended to a Corporate giant contesting the matter effectively to protect its possession over the property, without paying rent for 23 years.

30. Be it as it may, the Apex Court in its order dated 08.03.2021, while disposing the suo motu Writ Petition No.3 of 2020, has issued the following directions:-

1. *In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.*

2. *In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.*

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

31. As per the above direction No.3, the outer limit (within which the Court or tribunal can condone delay) also shall stand extended in computing the period of limitation. Therefore, if the said direction is applied, the delay beyond 90 days for filing the written statement need to be condoned, though the applicant does not deserve. Accordingly, the delay is condoned with costs of Rs.1,00,000/- payable to the plaintiff.

32. Regarding A.Nos.650 & 651 of 2020, this petition is filed for directing the defendant to furnish security by way of a bank guarantee or deposit of title deeds pertaining to any immovable property. The claim of the plaintiff is around Rs.128,90,00,000/-. The specific case of the plaintiff is that the land is in

use and occupation of the defendant/respondent even after the expiry of the lease period. It is alleged that for the past 23 years i.e., since 1998 the respondent/defendant has not paid any money towards the rent for the use and occupation of the property. The said averment is not countered or denied by the defendant except saying that by virtue of the order passed by the Hon'ble High Court in the collateral proceedings (i.e.,) in the S.A.No.185 of 2021 filed against the eviction order, a sum of Rs.2 crore has been deposited and Rs.3.5 lakhs paid every month towards the rent. The interim order dated 26.02.2021 relied by the respondent/defendant reads as below:-

“5.Considering the submissions of both the parties, this Court is of the view that it would appropriate to pass an order to direct the appellants to pay a sum of Rs.2 crore to the respondent-M/s.ATM Constructions (P) Ltd., and to pay a sum of Rs.3.5 Lakhs as rent from the month of March 2021 until the disposal of the Review Petition.

6.Accordingly, the Appellants are directed to pay a sum of Rs.2 crore to the credit of the respondent, M/s.ATM Constructions (P) Ltd., within a period of six weeks time, from the date of receipt of a copy of this order. The rent shall be paid on or before 5th date of every month, from the month of March 2021.

7.It is made clear that the appellants have to take necessary steps to bring the Review Petitions at the earliest point of time. It is also made clear that the deposit of amount is only for granting interim stay till the disposal of the Review Petition Nos.1063 & 1067 of 2020, pending before the Hon'ble Supreme Court of India, however, without prejudice the rights of the respondent, which is yet to be adjudicated in C.S.No.62 of 2020 in A.Nos.650 & 651 of 2020.”

33. The said order is very clear that the interim order to deposit Rs.2 crore and to pay a sum of Rs.3.5 lakhs every month is without prejudice to any order passed in A.Nos.650 and 651 of 2020. The present suit is for recovery of Rs.128,90,00,000/-. These two applications are to furnish security for the said amount and to pay a sum of Rs.30,50,000/- per month towards damages. The quantum of liquidated damages claimed by the plaintiff has to be ascertained only after examination of witnesses and evidence. The applicant/plaintiff has furnished the state guideline value for the said property which indicates that the guideline value of the property as on 09.06.2017 is Rs.12,730/- per sq.ft. Therefore, this Court tentatively fixed the ground rent at Rs.50/- per sq.ft per month i.e., Rs.600/- per year which is around 5% of the value. While fixing the ground rent at Rs.50/- per square feet, the damages shall be paid for use and occupation is approximately

Rs.6,00,000/-. The defendant/respondent is depositing Rs.3.5 lakhs pursuant to the interim order passed in C.M.P.No.3758 of 2021 in S.A.No.185 of 2021 dated 26.02.2021. The balance of Rs.2,50,000/- shall be credited in the account of the plaintiff/applicant on or before 5th of every month, starting from the month of March 2021. The total amount payable by the defendants as tentative rent shall be Rs.6,00,000/-

34. Regarding furnishing security, it is alleged that the defendant/respondent Company is negotiating with third party Private Sector to sell the Company. In such circumstances, to protect the interest of the applicant/plaintiff, who had succeeding in the suit for eviction but unable to get the possession of the property in view of the stay granted in S.A.No.185 of 2021. It is equitable to direct the respondent/defendant to furnish security for a sum of Rs.60 crores, which will be about 50% of the suit claim. The security shall be furnished within 45 days from today.

35. As a result, the *Application Nos.650 & 651 of 2020 are partially Allowed* and *Application No.668 of 2021 is allowed* on payment of costs of Rs.1,00,000/- on or before 15.05.2021. Post the suit on 04.06.2021, for further

proceedings.

19.04.2021

Index :Yes
Internet :Yes/No
Speaking Order/Non-speaking order

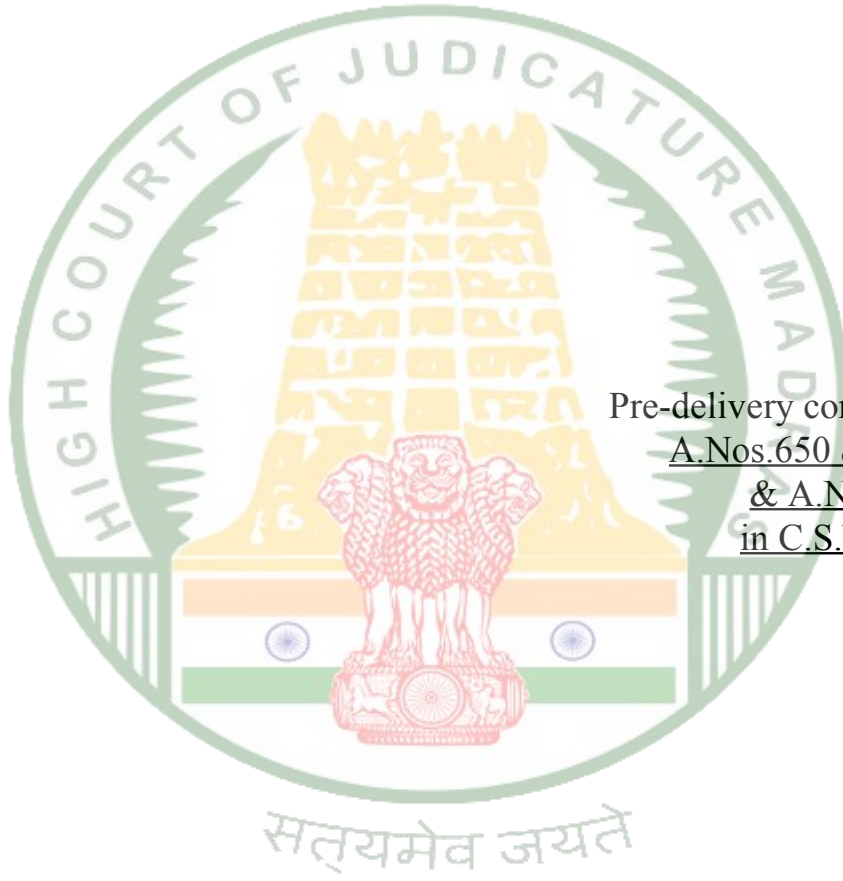
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Dr.G.Jayachandran,J.

bsm



Pre-delivery common order in
A.Nos.650 & 651 of 2020
& A.No.668 of 2021
in C.S.No.62 of 2020

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19.04.2021