

**Application Nos.879, 2241 and 2242 of 2021
in
C.S.(comm. Div) No.706 OF 2018**

DR.G.JAYACHANDRAN,J.,

Application No.879 of 2021 is filed to set aside the exparte order passed by this Court on 04.02.2021.

2.The applicant is the sole defendant in the suit filed for recovery of money. Summons were served on the defendant on 13.12.2018. The suit being commercial suit, the defendant is supposed to file written statement within 30 days from the date of receipt of the suit summon. However, the defendant has filed his written statement only on 02.04.2019. As per the provisions of the Commercial Courts Act, the delay of filing written statement beyond 30 days can be condoned for appropriate reason, if the delay is not beyond 90 days. In this case, 90 days period to condone the delay falls on 10.04.2020. However, the defendant in this case has filed written statement prior to the expiry of 90 days along with an application to condone delay. Unfortunately, the condone delay application was not numbered for certain defects. Hence, the written statement was not taken on file. Meanwhile, the suit was listed under the caption “Undefended Board” before the Court dealing with regular suits. On 04.02.2021, the defendant was called absent and set exparte. Thereafter, the learned counsel for the defendant through video conference has appeared before the Court on 08.03.2021, when the matter was listed and had made representation that

his written statement with condone delay application is in the Registry and not yet numbered and will verify and represent the same. Under the circumstances, the present application is filed by the defendant to set aside the exparte order dated 04.02.2021.

3.The plaintiff herein has filed a detailed counter stating that in lieu of the decision rendered by the Supreme Court in *M/s.SCG Contracts India Private Limited vs. M/s.K.S.Chamankar Infrastructure Private Limited reported in 2019(12) SCC 2010*, it is mandatory on the part of the defendant to file written statement within 30 days or within the extended period of 90 days along with condone delay application stating reasonable cause for delay or else the right of defendant to file written statement will stand forfeited. In this case, since the defendant had not represented the written statement and the condone delay application in time and wasted more than a year, he was rightly set exparte and therefore, he has no sufficient cause to set aside the order dated 04.02.2021.

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4. On perusal of the records, as observed by this Court, though the written statement was filed along with condone delay petition within permissible period, after the return of the written statement for defective filing, the defendant has not represented the same within reasonable time, which lead to calling him absent and setting him exparte. In the affidavit of the application to set aside the exparte order,

the applicant in paragraph No.3 has stated that the delay in complying with the returns were not wilful but due to the covid 19 pandemic situation. It is well known fact that during the relevant point of time after March 2020, access to the court premises was very much restricted and the normal activity of the Court proceedings was almost crippled. Therefore, this Court is of the view that the defendant, who has filed his written statement within the permissible period of limitation, should not be deprived of the advantage of put forth his defense in the money suit. Hence, the order of this Court dated 04.02.2021 declaring the defendant exparte is set aside. Accordingly, Application No.879 of 2021 is allowed.

5.To avoid delay in formally entertaining the application for delay in condonation, this Court directs the Registry to number the condone delay applications. The delay in filing the written statement and representing the same are condoned. The written statement filed by the defendant is taken on file. Accordingly, Application Nos.2241 and 2242 of 2021 are allowed.

6. Learned counsels are directed to file affidavit of admission and denial by 29.07.2021. Call the matter on **29.07.2021**.

01.07.2021

DR.G.JAYACHANDRAN,J.
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**Application Nos.879, 2241 and 2242 of 2021
in
C.S.No.579 of 2019**

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