

A.No.2795 of 2021
in
C.S.(Comm. Div.)No.126 of 2020

DR.G.JAYACHANDRAN, J.

This application is filed to condone the delay of 125 days in filing the written statement.

2. The very serious question of law has been raised by way of counter in this application, since the suit pertains to a commercial dispute falling within the definition of the Commercial Courts Act.

3. The facts in brief is that, the suit seeking damages and permanent injunction was presented on 17.02.2020 and admitted on 16.03.2020. The defendant received the suit summons on 14.07.2020 and entered appearance through counsel and contested the original application in O.A.No.170 of 2020 filed for ad interim injunction. After completion of the pleadings in O.A.No.170 of 2020, this Court heard both sides and passed an order on 06.10.2020. Thereafter, the defendant has filed his written statement in the Registry on 15.12.2020. Since there was defect in the written statement, same

was returned to cure on multiple occasions. The written statement as such filed with delay of 125 days.

4. Order VIII Rule (1) of C.P.C., (as amended by the Commercial Courts Act) contemplates that the defendant who fails to file the written statement within the period of 30 days from the date of receipt of the suit summons shall be allowed to file the written statement on such other day as may be specified by the Court for the reasons to be recorded in writing and on payment of such costs as the Court deems it fit. However such application for condonation of delay shall not be beyond 120 days from the date of service of summons.

5. In this case, the suit summons was served on the defendant on 14.07.2020 as per amended Order VIII Rule (1) of C.P.C.. The defendant ought to have filed the written statement on or before 13.08.2020, even in case there is any sufficient cause to condone the delay, the written statement ought to have filed on or before the expiry of 120 days from the date of receipt of the summons and not beyond that date. The said upper limit for filing the written statement in the instant case expired on 13.11.2020. Whereas, the written statement filed on 15.12.2020.

6. The learned counsel for the applicant/defendant would submit that due to pandemic situation and being seriously engaged in defending the interlocutory application in O.A.No.170 of 2020, the defendant was not able to file his written statement within 120 days limit. However, the Hon'ble Supreme Court has passed an order in Writ Petition Suo Motu (Civil) No.3 of 2020 had excluded the period from 15th March 2020 to 14.03.2021 for reckoning limitation. If the said period is excluded, the written statement falls well within the permissible period of limitation. Even otherwise, the delay of 125 days need to be condoned, since the defendant was actively engaged in defending the interlocutory application and there was no deliberate delay on the part of the defendant.

7. Contrarily, the learned counsel for the respondent/plaintiff would submit that the limitation prescribed under the Commercial Courts Act is non-negotiable. The Apex Court has clearly held that in view of the object of the Commercial Courts Act, which envisages expedite trial the limitation for filing the written statement as prescribed under Order VIII Rule (1) of C.P.C., (As amended by the Commercial Courts Act) is non-negotiable and no written

statement filed beyond 120 days from the date of receipt of summons can be entertained.

8. Regarding the order of the Hon'ble Supreme Court suo motu passed in Writ Petition (Civil) No.3 of 2020 dated 08.03.2021, the learned counsel for the respondent/plaintiff would submit that the intention of the Hon'ble Supreme Court invoking Article 141 and 142 of the Constitution is very clear and the said order was passed taking into consideration the pandemic situation leading to lock down and denial of physical access to the Court of justice. At paragraph 3 of the order the exclusion of period was confined only to Section 12 A of the Commercial Courts Act and the limitation under any other laws for instituting, proceeding and termination of proceeding. Whereas, in the instant case filing of the written statement does not fall under any of this category for exclusion of limitation period.

9. Per contra, the learned counsel for the applicant/defendant would state that filing of written statement should fall within the expression termination of proceedings, since the statute prescribes upper limit for filing the written statement and failure of filing the written statement within the time will

terminate the right of the defendant's to file the written statement.

10. On considering the rival submissions and relevant provisions, this Court finds that as per Order VIII Rule (1) of C.P.C., if the written statement is not filed within 30 days, the defendant has to satisfy the Court the reason for not filing the written statement within 30 days and such application should also be within 120 days from the date of receipt of suit summons. If in case, the defendant fails to file the written statement within 120 days, then his right to file the written statement gets forfeited and the Courts shall not allow the written statement to be take on record. In a civil proceedings filing the written statement is a stage, which indicates completion of pleadings and takes the suit to the next stage. As far as the Commercial Courts Act is concerned, on completion of pleadings under Order XI Rule (4) of C.P.C., the suit moves on to the next stage namely filing of Affidavit of Admission and Denial of documents.

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11. Reading of Order VIII Rule (1) of C.P.C., with the direction of the Hon'ble Supreme Court passed under Article 141 and 142 of the Constitution vide order dated 08.03.2021 would indicate that the period 15.03.2020 till

14.03.2021 has to be excluded for computation of limitation under Order VIII Rule (1) of C.P.C., also since the said limitation prescribed tantamount to termination of proceedings. For better understanding, the paragraph 3 of the Hon'ble Supreme Court order dated 08.03.2021 is extracted:

“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 of tribunal can condone delay) and termination of proceedings.”

12. In view of this Court forfeitor of right to file the written statement tantamount to termination of proceedings for the process of civil litigation. Once the defendant is forfeited of his right to file the written statement, his right of participation in the suit gets limited to an extend of cross examination of plaintiff's witness and making his written and oral submission.

13. In the light of the above discussion, the application to condone the delay is allowed on payment of costs of Rs.25,000/- to the respondent/plaintiff on or before 31.08.2021.

14. Post the matter on 03.09.2021.

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16.08.2021



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