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Application No.3426 of 2021

in C.S.79 of 2011

(Commercial Division)

N. ANAND VENKATESH. J.

This application has been filed by the 1st defendant, seeking the leave of this Court to file additional written statement.

2. The 1st respondent/ plaintiff has filed the suit for recovery of money on the basis that he had transported the consignments based on the invoices raised on the applicant and that the applicant did not make the payment for the supply of the consignments.

3. The applicant filed a written statement. The main defence that was taken by the applicant in the written statement is to the effect that there was a continuous transaction between the applicant and the plaintiff with a running account wherein the applicant had made various payments and the plaintiff has attempted to portray as if the two imports in question are separate and distinct. The specific stand taken in the written statement is that there is an outstanding amount of a sum of Rs.76,92,828/- [Seventy six lakhs ninty two thousand eight hundred and twenty eight only] standing to the credit of the applicant which has not been adjusted. The further defense taken in the written statement is that out of the 59 containers, only 52 containers were cleared and the balance 7 containers were sent back to the plaintiff. Applicant



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has also pleaded various hardships faced by the applicant and the resultant criminal cases wherein the applicant was remanded to judicial custody and he was forced to pay the differential duty and demurrage charges in order to come out on bail. While filing the written statement, the applicant has also made a counter-claim under various heads for a total sum of Rs. 2,76,39,524 /- [Two Crores seventy six lakhs thirty nine thousand five hundred and twenty four only] with interest.

4.The issues were framed and the suit was at the stage of cross examination of PW-1. The matter was also sent back to this Court by the Master for fixing fresh dates and rescheduling the case management. Orders were also passed in this regard on 29.07.2021. It is at this point of time, this application came to be filed seeking for leave to file additional written statement.

5.Heard Mr.K.Chandrasekaran, learned counsel for applicant/1st defendant and Mr.A.Ganesh, learned counsel for 1st respondent /plaintiff.

6. This Court has carefully considered the submissions made on either side and the reasons assigned in the affidavit filed in support of the application.

7. The applicant wants to file the additional written-statement more by way of explaining the facts in detail to support



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the defense taken in the written statement. The applicant had specifically taken a stand in the written statement to the effect that there was a running account between the parties and various payments were made by the applicant and there is an outstanding amount of Rs.76,92,828/- that stood to the credit of the applicant. During the course of cross-examination of PW-1, the applicant seems to have caused a notice to the plaintiff for the production of account statements for the period from 01.03.2010 to 31.02.2011. The plaintiff seems to have responded to the notice to the effect that the request cannot be acted upon in the absence of necessary pleadings in the written statement. It is because of this stand taken by the plaintiff, the applicant has come forward to file this application by providing the details of all the transactions between the parties and the payments made, which are all borne out by documents.

8. This is a suit which got transferred to the Commercial Division in the year 2019. It is therefore necessary for this Court to keep in mind the scope of Section 15(3) of the Commercial Courts Act, 2015. In any case, the application of order VIII rule 9 of CPC is not prohibited before the Commercial Division and it will apply even in these proceedings.

9. The main ground on which this application has been resisted by the learned counsel for the 1st Respondent/plaintiff is that there is enormous delay which has not been explained by the



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applicant. In reply to this submission, the learned counsel for the applicant submitted that delay by itself is not a ground to reject the application if this Court finds that there is justification for filing the additional written statement and that such an opportunity must be given to the applicant to effectively defend their case.

10. It is true that there is a delay in filing this application. However, there is a necessity to file the additional written statement by pleading all the necessary facts to substantiate the defence taken in the original written statement. The details with regard to the statement of accounts sought for by the applicant from the plaintiff was not provided and therefore, the applicant has to necessarily come out with these details to substantiate their defence. The applicant is not attempting to project a new case and the additional written statement does not run contrary to the original written statement. The additional written statement merely explains the various transactions that took place between the parties and the payments made by the applicant. There is a running account between the plaintiff and the applicant and this is attempted to be explained by providing all the details in the additional written statement. These details are all borne out by documents and that will be relied upon by the applicant. If the additional written statement is not allowed, the applicant may face technical objections while relying upon the relevant documents not supported by necessary pleadings.



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11. This Court cannot reject this application merely on the ground of delay. This court finds that there is justification to file the additional written statement and denying such an opportunity to the applicant will cause grave prejudice to the applicant to establish their defense. On the other hand, no prejudice will be caused to the plaintiff since these are transactions that actually took place between the applicant and the plaintiff. This application therefore deserves to be allowed to render substantial justice.

12. In the result, this application is allowed. However, for the delay caused by the applicant in filing this application and thereby delaying the progress in this suit, the applicant has to be mulcted with costs. The applicant is directed to pay costs of a sum of Rs.25,000/- [Rupees twenty five thousand only] to the State Legal Services Authority on or before **29.11.2021**. This application will stand allowed, subject to the payment of the costs imposed by this Court.

17.11.2021

1/2

Internet: Yes.

Internet: Yes

KP



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KP

Pre-Delivery Order
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