



A.No.264 of 2022
in C.S.No.334 of 1998

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V.BHAVANI SUBBAROYAN.J.

This application has been filed to permit the applicant to file an additional written statement in the above suit.

2. Originally, the suit was filed for infringement of copyright and passing off by the defendants. The suit was filed in the year 1998 with interim applications in O.A.Nos.212 and 213 of 1998 seeking interim reliefs against the defendants, and this Commercial Division had taken cognizance of the suit on 01.07.2021. When the cognizance was taken by this Court, the defendants 1 and 2 have not filed their written statement. Hence, time was granted to the learned counsel for the defendants to file their written statement on or before 26.07.2021. However, the written statement has not been filed by the learned counsel for the defendants within the said time, rather a memo has been filed by the learned counsel for the defendants 1 and 2 with a delay of two days, adopting the counter affidavit filed in O.A.Nos.212 and 213 of 1998 as written statement of the defendants.

3. Considering the fact that the suit was filed in the year 1998 and this



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Commercial Division had taken cognizance of the suit only on 01.07.2021, this Court had taken the memo on file and directed the parties to file affidavits of admissions and denial by 16.08.2021. Thereafter, the parties have filed their statement of admissions / denial and issues were also framed by this Court. Then, the defendants have taken out an application in A.No.4571 of 2021 for filing additional documents in the suit. The same was opposed by the learned counsel for the plaintiff as there was an inordinate delay in filing the said application. However, the same was allowed by this Court subject to payment of cost of Rs.30,000/- to the Tamil Nadu State Legal Services Authority on or before 20.12.2021. The said cost has been paid by the defendants and compliance has also been recorded by this Court on 22.12.2021. Now, the defendants have filed this application seeking permission to file additional written statement.

4. The said application is resisted by the learned counsel for the plaintiff stating that the facts that are pleaded in the additional written statement have already been stated in the counter affidavit filed by the defendant which has been adopted as a written statement and no new facts are presented in the proposed additional written statement. Further, it is stated that there is no



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sufficient reasons shown by the defendant to receive additional written statement.

5. The learned counsel for the applicant / defendant would submit that several developments have been taken place after filing of the suit and the counter affidavit filed by the defendant. Hence, certain new defences are taken in the additional written statement and the same should be taken on file, in order to render complete justice to the parties.

6. The learned counsel for the defendant has also relied upon certain judgments of the Hon'ble Supreme Court in support of his case, which reads as follows :

i) (2009) 15 SCC 528, Olympic Industries Vs. Mulla Hussainy Bhai Mulla Akberally and Others.

ii) 2022 SCC Online SC 180, Prakash Corporates Vs. Dee Vee Projects Limited.

iii) C.R.P.No.1119 of 1963, Ramaswami Naidu Vs. Pethu Pillai



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7. Heard the learned counsel for the applicant / defendant and the learned counsel for the respondent / plaintiff.

8. To decide this issue, It would be relevant to extract the provisions under Order 8, Rule 1 of CPC and it is extracted hereunder :

“Provided that where the defendant fails to file the written statement within the said period of third days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than ninety days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

9. On a reading of the above said provisions, it is made clear that if the defendant fails to file written statement within 30 days from the date of service of summons, the Court may permit, for the reasons recorded on the petition filed by the defendant, to file written statement on some other day, but the maximum time limit is 120 days from the date of service of summons, and after



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120 days, the defendant shall lose his right to file the written statement.

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10. In the present case, the suit was filed in the year 1998 and summons were served on the defendants on 01.07.1998. When this Court had taken cognizance of the suit on 01.07.2021, the defendants were granted permission to file their written statement and accordingly, a memo has been filed by the defendants, adopting the counter affidavit filed in O.A.Nos.212 and 213 of 1998 as written statement of the defendants, and the same has been taken on file on 02.08.2021. Now, almost six months have gone in filing the said memo and the time limit fixed in the above provisions for filing the written statement also expired. At this juncture, the defendants seek permission for filing additional written statement stating that several developments have been place after filing of the suit. The defendants, while took out an application for filing additional documents, have not whispered anything regarding the said developments that have occurred after filing the suit. Hence, the above contention cannot be accepted. When the above provisions specifically state that the maximum time limit for filing the written statement is 30 days and 90 days by Court's leave, totally 120 days from the date of service of summons, even though this Court has extended the opportunity for filing written statement, the defendants have not chosen to file a written statement but pleaded to adopt the



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counter in O.A.Nos.212 and 213 of 1998. If the defendants had fresh developments, they ought to have filed a written statement instead of raising plea to treat the counter as written statement. Hence, the defendants' claim shall not be permitted and filing of written statement beyond the said period is not permissible. Also, the judgments relied on by the learned counsel for the defendants would not be applicable to this case as the nature of those cases are different from the present case and the findings are entirely on different footing.

11. Hence, this application is dismissed.

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