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Application No.1331 of 2022 in
C.S.No.485 of 2001

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V.BHAVANI SUBBAROYAN, J.

The applicant / 7th defendant has filed the present application to condone the delay of 7460 days in filing the written statement in C.S.No.485 of 2001.

2. Heard the learned counsel appearing for the respective parties.

3. The learned counsel for the applicant / 7th defendant contended that the summons in the above suit was served on the applicant / 7th defendant on 11.08.2001 and the written statement ought to have filed within a period of six weeks from the said date, viz., on or before 22.09.2001. Further, after service of summons in the above suit, the 2nd defendant, who was also a Director had given Vakalath to his counsel to enter appearance in the above suit. That apart, the plaintiff had filed Original Application No.558 of 2001 for the relief of conveying of 25% share in the asset of Hotel Picnic Plaza and O.A.No.616 of 2002 was filed for the relief of directing the defendants 1 to 5 jointly or severally to pay to the plaintiff, the market value of his share in the 6th defendant



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company and the same were dismissed by this Court on 12.02.2002.

As against the same, the plaintiff filed appeals in O.S.A.Nos.38 and 39 of 2003 and the same were also dismissed on 14.07.2008 after a gap of 5 years.

4. The learned counsel for the applicant / 7th defendant would further submit that there are number of litigations pending between the same parties and either of the parties approached the Hon'ble Division Bench as well as Hon'ble Supreme Court, by way of an appeal even against an Interim Order. Since the plaintiff and other defendants were filing applications one after the other in the present suit, the applicant could not file written statement within a time frame as prescribed. Moreover, pursuant to the decree passed in C.S.No.912 of 2006 on 19.09.2011, the learned counsel, who is appearing for the applicant at present had taken change of vakalat from the erstwhile counsel on 31.01.2022 and the present counsel has taken steps immediately to prepare the written statement and filed the same on 24.02.2022 and in this process, there has occasioned a delay of 7460 days. Therefore, due to the above said bonafide reasons, the present application may be allowed and if the same is not allowed, the applicant would be greatly prejudiced.



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5. The learned counsel for the plaintiff / 1st respondent submitted that the applicant / 7th defendant is the party to the proceedings from the day one of the suit, i.e., from the year 2001 and the time granted was expired within a period of six weeks. Though the applicant had an opportunity to file the written statement, the applicant has not chosen to file the written statement roughly for more than 20 years. That apart, the reasons stated in the affidavit filed in support of the present application cannot be accepted for condoning the delay. In the similar matter, the 2nd defendant had filed an application to condone the delay of 7400 days in Application No.4811 of 2021 and the same was allowed by the Single Bench of this Court on payment of Rs.1,00,000/-, [in which Rs.10,000/- was ordered to go to the plaintiff's counsel, Rs.45,000/- to the Chief Justice Relief Fund and the remaining Rs.45,000/- to the Adyar Cancer Institute (WIA), West Canal Road, Gandhi Nagar, Adyar, Chennai.] Learned counsel also submitted that this application may also be considered on the same lines and appropriate orders could be passed in this regard.

6. The learned counsel appearing for the 2nd respondent / 2nd defendant started arguing the matter by stating that there was a delay in



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not bringing the legal heirs on record who died in the year 2004, only after 17 years, the same has been filed and allowed by this Court, which submission is not relevant to deal with the present issue on hand.

7. This Court has got nothing to venture into the said alleged statement made by the learned counsel for the 2nd respondent, in view of the fact that already this Court has allowed the relevant application and legal heirs were brought on record. This will not be a reason for the applicant / 7th defendant for not filing the written statement in time. Merely stating that the present authorised had taken over the management of the applicant – company only after the Decree passed on 19.09.2011 and that the present counsel is engaged on 31.01.2022 is not a substantive reason and there was no specific reason as to why there was delay of 11 years in filing the written statement, even as per the statement of the applicant that he had taken charge of the company in the year 2011 itself.

8. Further, it is also seen from the records that the 2nd defendant is the person, who was handling the entire issue of the 7th defendant also and hence, the applicant cannot now plead ignorance and state



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that he has come into the picture only in the year 2011 and from erst while counsel, he himself changed the vakalat and filed the application to condone the delay in filing the written statement, is not a valid reason.

9. By way of reply, the learned counsel for the applicant / 7th defendant would submit that on earlier occasion, this Court has allowed the application and condoned the delay in filing the written statement to the similarly placed person like that of the applicant on payment of Rs.10,000/- and the same indulgence can be shown to this applicant also.

10. Since this Court on earlier occasions, in A.Nos.4811, 4812 and 65 of 2021 on 07.01.2022 had condoned the delay of 7,400, 7374 and 7395 days in filing the written statement of the 2nd 3rd, and 6th defendants, on payment of Rs.1,00,000/- in each application [Rs.10,000/- was ordered to go to the plaintiff's counsel, Rs.45,000/- to the Chief Justice Relief Fund and the remaining Rs.45,000/- to the Adyar Cancer Institute (WIA), West Canal Road, Gandhi Nagar, Adyar, Chennai], there is no other option for this Court to other than allow the present application also on similar terms. Even though this Court is not



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inclined to accept the reasons stated in the affidavit filed in support of the present petition, which are not proper in nature, based on the earlier orders and that the learned counsel for the applicant has also insisted this Court to pass the same order to this applicant also, this Court is inclined to allow the application on payment of Rs.1,00,000/-, as cost, as there should not be any disparity between the persons, who are in the same pedestal. The said amount of Rs.1,00,000/- shall be paid to the School meant for developments of Tribals at Nilgiris, viz., Government Tribal Welfare Residential High School Kargudi, Mudumalai, Gudalur, Nilgiris, Pin Code – 643 211 on or before 18.04.2022, Contact Person: Mr.Marimuthu, Principal, Ph.No.9486086089.

Post on 19.04.2022 'For Reporting Compliance'.

25.03.2022

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