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A.No.1441 of 2022

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in C.S.(Comm.Suits) No.828 of 2015

SENTHILKUMAR RAMAMOORTHY,J

This application is filed to condone the delay of 1578 days in re-presenting the written statement. The written statement of the defendant appears to have been returned on 28.08.2017. Without realising that the written statement was returned on account of defects, the parties proceeded with the framing of issues and the recording of evidence. In fact, evidence was recorded in full and the suit was set for final hearing in December 2019. At that juncture, it was discovered that the written statement had been returned on account of defects and was not on record. Meanwhile, the plaintiff had filed a replication and such replication was also not taken on record in view of the return of the written statement.

2. The applicant states that the Covid-19 pandemic intervened shortly after it was discovered that the written statement had been returned. In view of the lockdown imposed in the wake of the pandemic, the written statement could not be re-presented. The present application is filed in the said facts and circumstances.

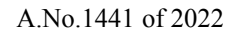


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3. The respondent / plaintiff opposes the application on the ground that the defendant has delayed the final disposal of the suit by about 2-1/2 years. The plaintiff points out that the suit was determined to be a commercial case in April 2019 and that the present application is not in conformity with Order VIII CPC as applicable to a commercial dispute.

4. Both parties proceeded on the assumption that the pleadings were complete and recorded evidence in full. Thus, it is clear from the conduct of parties that the failure to re-present the written statement was inadvertent and not with the intention of protracting the proceedings. Nonetheless, the failure of the defendant to take the return and re-present the written statement has delayed final disposal by about 2-1/2 years. Although the defendant cites the Covid-19 pandemic with a measure of justification, it does not entirely explain the failure to re-present the written statement. Therefore, this application is allowed subject to the payment of a sum of Rs.50,000/- as costs by the defendant to the plaintiff. Although the quantum of costs is not substantial in the context of a commercial dispute, the intention is to indicate to parties that there is



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