A.Nos.2439 & 2637 of 2022
in
C.S.No.468 of 2011

Reserved on 06.09.2022	Pronounced on 23.09.2022

G.CHANDRASEKHARAN, J.

Both these applications are filed to condone the delay of 3948 days in filing the written statements.

2.The learned counsel for the applicants submitted that the applicant in A.No.2439 of 2022 is the 9th defendant and the applicant in A.No.2637 of 2022 is the 8th defendant in the main suit in C.S.No.468 of 2011.

3.The applicant in A.No.2439 of 2022 is one of the plaintiff in C.S.No.65 of 2008. C.S.No.468 of 2011 is filed for recovery of money from the second and third respondents by the first respondent. These applicants have been arrayed as defendants only in their capacity as tenants under the second respondent. No relief has been sought for against them. Therefore, the applicants thought that it was not necessary to file the written statement within the prescribed time. In the year 2018, the applicants were served with an interim application filed by the first respondent praying to decree the suit in terms of a compromise alleged to have been entered into with the respondents 1 to 5. It came to be known that the respondents 1 to 5 clandestinely agreed to convey two grounds from the rear portion of Kothari Buildings, in respect of which, an interim injunction operates in C.S.No.65 of 2008. Applicant in A.No.2439 of 2022 is one of the plaintiff in C.S.No.65 of 2008 and the applicant in A.No.2637 of 2022 forms part of the sister company of the HCK group of companies. The application to record the compromise in A.No.9182 of 2018 was vehemently opposed by the applicant in A.No.2439 of 2022 and others. This Court, thus, rejected the prayer for passing the decree on the basis of compromise and directed that both suits in C.S.No.65 of 2008 and C.S.No.468 of 2011 to be tried jointly or simultaneously. Under these circumstances, the applicants are filing their written statement, to place on record certain vital facts which had been suppressed by the respondents 1 to 5. In respect of the proceedings in C.S.No.65 of 2008, the delay of 3948 days in filing the written statement was due to the fact that the parties explored the possibility of settling their disputes and it proved to be unsuccessful. The respondents in complete disregard to the orders of the Hon'ble Supreme Court tried to enter into a compromise. Unless the written statement filed by the applicants are received, they will be deprived of the opportunity to demonstrate the dealings with the respondents 1 to 4.

4.Per contra, the learned counsel appearing for the respondent/plaintiff and fourth respondent submitted that the suit is pending from 2011. As per the orders of the Court on 09.01.2020, C.S.Nos.65 of 2008 and 468 of 2011 were directed to be disposed of simultaneously. There were other proceedings between the parties and accordingly, a joint memo of compromise was signed by the plaintiff and the defendants 1 to 4 & 6 and they wanted the case to be disposed of in terms of the joint memo of compromise. The compromise memo would manifest that the subject matter of the dispute in C.S.No.468 of 2011 had been settled by a lawful compromise between the parties and the suit can be disposed of in terms thereof. The applicants have not satisfactorily explained the delay of 3948 days in filing the written statement. The delay is enormous. On the pretext of settlement, the proceedings have been dragged on citing pendency of C.S.No.65 of 2008 and the delay occasioned has caused enormous loss, prejudice and inconvenience to the plaintiff and the defendants 1 to 4 & 6. The applicants are only tenants under the second respondent. They cannot claim any independent right in the case. They are no longer in possession of the suit property and opted to vacate and surrender the possession to KICL. It is further submitted by the learned counsel for the first respondent that there is no relief asked against these applicants and infact, he made an endorsement for not pressing the suit against these applicants. Thus, the learned counsel appearing for the respondents submitted that these applications filed with a huge delay of 3948 days without sufficient reasons for not filing the written statement cannot be entertained and are liable to be dismissed.

5.In reply, the learned counsel for the applicants submitted that there is already an order passed in A.No.9182 of 2018, in which, there is a specific direction to try both suits in C.S.No.65 of 2008 and C.S.No.468 of 2011 either simultaneously or jointly. It is found that only if the suit in C.S.No.65 of 2008 is decided, the pending issues between the parties will be resolved finally and effectively. Even in A.No.9182 of 2018, similar claim of not pressing the suit against the applicants had been taken up. Despite that aforesaid direction was issued for simultaneous or joint trial. There is no appeal filed against the order passed in A.No.9182 of 2018. In the said circumstances, the respondents cannot make objections to receive the written statement of the applicants on the ground that the suit against them is not pressed and on the ground of delay.

6.Considered the rival submissions on either side and perused the records.

7.The suit in C.S.No.65 of 2008 was filed by one Bhadra Shyam Harshad Kothari and 15 others against 1.Pradeep D Kothari 2.M/s.Kothari Industrial Corporation Ltd. 3.M/s.Beekey Properties Pvt.Ltd. for the following reliefs:

a. Directing the 2nd defendant through the 1st defendant to execute a release deed conveying the schedule mentioned property to and in favour of the plaintiff No.3 as per Memorandum of Agreement dated 05.03.2000 as recorded by the Hon'ble Supreme Court vide order dated 09.03.2000 while disposing Civil Appeals Nos.5909 – 5916, 5918, 5922-5929, 5939, 5944, 5811 and 5904/1994 and supplemented by Memorandum of Understanding dated 31.08.2005.

b. Directing the 2nd defendant to pay a sum of Rs.1,78,57,729/- as per the agreement dated 29.11.2001 to Escrow Agent appointed as per Memorandum of Agreement dated 29.11.2001 and supplemented by Memorandum of Understanding dated 31.08.2005.

c. Directing the defendants to do all such things as required under the agreements dated 05.03.2000 and

29.11.2001 and supplemented by Memorandum of Understanding dated 31.08.2005.

d.For costs of the suit; and

e.Such further orders as this Hon'ble Court may deem fit and thereby render justice.

8.Subsequent to the filing of the suit, Bhadra Shyam Harshad Kothari died and plaintiffs 17 to 20 had been impleaded. It is seen from the plaint averments that one late C.M.Kothari started a business of stock broking in the name of Kothari & Sons. D.C.Kothari & H.C.Kothari were the sons of C.M.Kothari. All the three promoted the following seven companies on various dates.

1.	Madras Safe Deposit Co.Ltd. (presently known as Kothari Safe Deposits Ltd.)	10.01.1936
2.	Kothari Textiles Ltd.	14.05.1937
3.	Balmadies Plantations Ltd.	20.03.1943
4.	Waterfall Estates Ltd.	13.04.1943
5.	Blue Mountain Estates and Industries Ltd.	04.05.1943
6.	The Investment Trust of India Ltd.	02.08.1946
7.	Adoni Spinning & Weaving Co.Ltd.	27.10.1954

9.After the death of C.M.Kothari in the year 1954, D.C.Kothari and H.C.Kothari started managing the Kothari Group of Companies jointly. In 1972, Pradeep D Kothari, Son of D.C.Kothari entered the business and started managing the affairs of the companies along with D.C.Kothari and H.C.Kothari. In pursuance of the agreement entered in 1982 for dividing all the corporate bodies and dissolution of the partnership firm, D.C. Kothari was to take over a) Kothari & Sons (Agencies) Pvt Ltd. b) Kothari & Sons (Nominees) Pvt Ltd., c) Underwriters & Financiers Pvt. Ltd. d) Teatex Pvt.Ltd. H.C.Kothari was to take over the following private limited companies a) Kothari Mehta & Co.Pvt.Ltd., b) Kothari & Sons (Industries) Pvt.Ltd., c) Planting (Agencies) Pvt.Ltd., d) Investment & Finance Corporation Private Ltd. Thereafter, they started managing the companies individually. By dissolution dated 02.08.1984, the partnership of Kothari & sons was taken over by D.C. Kothari and Pradeep D.Kothari. After the death of D.C.Kothari, in the year 1992, Pradeep D.Kothari became the Chairman of Kothari Industrial Corporation Limited. After the demise of H.C.Kothari in 1992, his son Bhadra Shyam Harshad Kothari became the

Chairman of M/s.Kothari Sugars & Chemicals Limited, Investment Trust of India and Kothari Safe Deposits.

10.Kothari & Sons partnership firm was run in a six storied building, namely, Kothari Buildings. The ground floor, first floor, fourth floor and fifth floors were occupied by Kothari Industrial Corporation Ltd. The second and the third floors were occupied by 2nd, 3rd and 5th plaintiffs. Kothari and sons offered the said land buildings to the Kothari Industrial Corporation Ltd., for sale to plaintiffs 2, 3 & 5. Four separate sale deeds dated 31.07.1972 were executed by M/s.Kothari & Sons, one in favour of the second defendant in respect of 2/3rd undivided share in the land and the whole of the ground, first, fourth and fifth floors and terrace and roof covering the fifth floor and all constructions thereon together with all stairways and lift well and the superstructures, covered parking sheds situated on the said site other than the whole of the main building and all compound walls and gates and one sale deed in favour of the three companies, namely, M/s.Kothari Sugars & Chemicals Ltd. In respect of 1/6th undivided share in the land and the whole of the second floor, Investment Trust of India Ltd. In respect of 1/12 undivided share in the land and eastern flat of the third floor and in favour of Kothari Safe Deposits Ltd., in respect of 1/12 undivided share in the land and the western flat of the third floor.

11.Subsequently a memorandum of understanding, dated 15.07.1985, was signed by the second defendant and second, third and fifth plaintiff, whereby, they were permitted to occupy certain portions. The plaintiffs purchased large number of equity shares of the second defendant in 1991 & 1992 to an extent of 4,77,560 equity shares. The second defendant made a rights offer of partly convertible debentures to all the registered shareholders. There were issues with regard to non allotment of the rights of partly convertible debentures for the Company Law Board. The decision of the Company Law Board dated 28.10.1983 was partly challenged by the second defendant before this Court. The plaintiffs then filed 22 Civil Appeals before the Hon'ble Supreme Court as against the order of the Division Bench of the Madras High Court. There were several litigations between the parties. To put an end to all the disputes, the plaintiffs and the defendants entered into a memorandum of agreement on 05.03.2000. The second defendant agreed to release 2/3rd undivided interest in the said property. For which, a consideration of Rs.4,53,00,000/- would be paid by M/s.Kothari Safe Deposits Limited. It was also agreed that the second defendant would pay a sum of Rs.6,67,70,028/- to the first defendant towards refund of the preferential issue of 24,74,569 equity shares. This amount was to be set off and adjusted against the consideration payable by the first defendant to the plaintiffs.

12.In view of the agreement, the Hon'ble Apex Court passed an order on 09.03.2000 disposing the appeals as per the agreements filed before the Court. Another memorandum of understanding dated 29.11.2007 was entered into between the plaintiffs and the defendants. In the meanwhile, plaintiffs are given to understand that the second defendant had availed financial assistance from various banks and financial institutions. The third defendant was assigned the first charge over the property against the second defendant. The obligations as per the agreements dated 05.03.2000 and 29.11.2001 have already been completed by the plaintiffs. However, the defendants have not complied with their part of the obligations. Therefore, the suit for the aforesaid reliefs.

13.The suit in O.S.No.468 of 2011 was filed for recovery of a sum of Rs.25,08,18,836.62 from the first defendant with interest as per the deed of assignment, dated 08.11.2006 and for other reliefs by M/s.Bekae properties (P) Ltd against M/s.Kothari Industrial Corporation Limited and eight others. The applicants herein are 8th and 9th defendants in this case. 9th defendant/applicant is the fourth plaintiff in C.S.No.65 of 2008. The plaintiff in C.S.No.468 of 2011 is the third defendant in C.S.No.65 of 2008. C.S.No.468 of 2011 is filed by M/s.Bekae properties (P) Ltd., as an assignee of the loan secured by the first defendant company. The suit property in C.S.No.65 of 2008 is also the suit property in C.S.No.468 of 2011.

14.It is seen from the pleadings in C.S.No.65 of 2008 that there had been litigations in respect of the suit property in C.S.No.65 of 2008 and related issues. Ultimately, the agreements dated 05.03.2000 and 29.11.2001 had been entered into between the parties and in terms of the agreements, the Hon'ble Supreme Court has also passed the order. It is the contention of the plaintiffs in C.S.No.65 of 2008 that they had performed their obligations as per the agreements against the defendants, namely, M/s.Kothari Industrial Corporation Ltd., and Pradeep D. Kothari, but, they have not performed their obligations resulting in filing of the suit in C.S.No.65 of 2008. During the pendency of the suit, the applicant/plaintiff initiated proceedings before the National Company Law Tribunal, Chennai, in CP/856/IBC/2018 u/s.7 of the Insolvency and Bankruptcy code for initiation of Corporate Insolvency Process. It appears that when the matter was pending before the National Company Law Tribunal, Chennai, the plaintiff and the first defendant entered into an amicable settlement and filed a joint memorandum of compromise dated 03.08.2018. Accordingly, the proceedings were disposed of by the National Company Law Tribunal, Chennai. In the meanwhile, in respect of the same suit property, the plaintiff in C.S.No.468 of 2011 had entered into an agreement with the defendants 1 to 5 by way of a compromise and filed an application in A.No.9182 of 2018 for passing the compromise decree in terms of the compromise. On going through the rival claim and finding that the 9th defendant in C.S.No.468 of 2011, namely, the applicant in A.No.2439 of 2022 strongly opposed the compromise on the ground that he is seriously affected by the compromise, this Court observed that whether the order passed by the Hon'ble Supreme Court dated 09.03.2000 or the order passed by NCLT dated 03.08.2018 will prevail, is the matter for adjudication. The impact and enforceability of the memorandum of understanding dated 05.03.2000 over the memorandum of compromise dated 03.08.2018 can be tested only after elaborate trial. Thus, it was ordered that the joint memo of compromise dated 19.11.2018 entered into between the plaintiff and the defendants 1 to 4 cannot be received at this juncture and it can be posted along with C.S.No.65 of 2008. Directions was issued to try C.S.No.468 of 2011 and C.S.No.65 of 2008 simultaneously or jointly. Therefore, this Court is of the considered view that the applicants are to be given an opportunity to file the written statements, else they would be seriously prejudiced. The claim of the respondent/plaintiff that there is no relief asked against the applicants and the suit against them is not pressed, will be considered at the final trial.

15.Perusal of the records shows that this case is pending for about eleven years. Though the delay in filing the written statement is huge, the matter has not reached the stage of framing of issues. Thus, this Court finds that the written statement can be received for giving an opportunity to the applicants to defend their case and for rendering complete justice to the parties.

16.Accordingly, both applications are allowed.

sli **23.09.2022**

G.CHANDRASEKHARAN , J.

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Pre-Delivery Order in
A.Nos.2439 & 2637 of 2022
in
C.S.No.468 of 2011

23.09.2022