



A.No.3087 of 2022

A.No.3087 of 2022
in C.S.No.49 of 2020

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SENTHILKUMAR RAMAMOORTHY, J.

This application is presented by the second defendant to re-call the order dated 27.08.2021 by which it was recorded that the second defendant had forfeited the right to file the written statement. The main ground on which this application is filed is that the written statement of the second defendant was filed on 15.03.2021 and therefore the order passed on 27.08.2021 proceeded on the wrong factual basis. Learned counsel for the applicant also points out that suit summons was served on the second defendant on 14.02.2020 and therefore the second defendant is entitled to the benefit of the orders passed by the Hon'ble Supreme Court for extension of time in the wake of the Covid-19 pandemic. In particular, he placed reliance on the judgment in *Prakash Corporates -vs- Dee Vee Projects Limited (2022) 5 SCC 112*.

2. Learned counsel for the plaintiff opposes this application on several grounds. He points out that the matter was listed on at least eight occasions after suit summons was served on the second defendant, and that the second defendant did not file the written statement on the said dates in spite of being represented by counsel. He also points out that the second defendant was directed to deposit a sum of Rs.5,00,000/- by order dated 22.04.2021 and that the amount was not deposited. His last submission is that this application has been filed after P.W.1 was cross examined in full.

3. The written statement bears a stamp indicating that it was filed on 15.03.2021. It also bears a second stamp indicating receipt on 22.07.2021.



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Undoubtedly, the written statement appears to have been filed in the Registry before the order of 27.08.2021 was issued. Therefore, the submission of learned counsel for the applicant that the order was issued on an erroneous basis is liable to be accepted. At the same time, the record shows that multiple hearings took place subsequent thereto and that the second defendant did not inform the Court about the above mentioned error. As a result, the schedule for examination of the witness was fixed at least on four occasions and eventually the cross examination of P.W.1 was concluded. In these circumstances, the applicant should be put on terms. Accordingly, this application is allowed on the following terms:

(i) The applicant shall pay costs of Rs.20,000/- (Rupees Twenty Thousand only) to the plaintiff within ***two weeks*** from the date of receipt of a copy of this order.

(ii) The plaintiff is granted leave to file a reply statement, if so intended. Such reply statement shall be filed within a period of ***two weeks***.

(iii) Both parties are directed to file draft issues on the next hearing date.

(iv) The second defendant has stated that he does not intend to adduce either oral or documentary evidence and the said statement is recorded.

4. List the matter on 13.09.2022.

30.08.2022

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