



A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

**A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022**  
**and**  
**A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022**

**M.SUNDAR, J**

This common order will dispose of captioned two applications in two separate suits. C.S.(Comm.Div.) No.94 of 2022 shall be referred to as 'Senior Suit' and C.S.(Comm.Div.) No.95 of 2022 shall be referred to as 'Junior Suit'.

2. In this order, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity. There is one plaintiff i.e., a sole plaintiff company in both 'Senior' and 'Junior' suits. There are two defendants in both 'Senior' and 'Junior' suits and the defendants are the same in both the suits. To be noted, the first defendant is a company and the second defendant is a natural person who is described as the Managing Director of the first defendant company.

3. Mr.K.Harishankar, learned counsel who has entered appearance on behalf of first defendant company is before this Commercial Division. Learned counsel submits that the captioned applications have been taken out by first defendant with prayers for 'condonation of delay' ['COD'] qua delay in filing written statements.



A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

WEB COPY

4. To be noted, there is no representation for plaintiff and there was no representation for plaintiff in the previous listing also i.e., on 08.11.2022 and the proceedings made on 08.11.2022 reads as follows :

*'In this proceedings, parties shall be referred to by their respective ranks in the main suit for the sake of convenience and clarity.*

*2. Ms.AN.Raajamani Ponnuu, learned counsel on record for first defendant is before this Commercial Division but there is no representation for plaintiff.*

*3. With the intention of giving opportunity to the plaintiff and plaintiff's counsel, list this matter again on 15.11.2022.'*

5. Considering the nature of applications on hand, this Commercial Division deems it appropriate to proceed with consideration of the applications. To be noted, second defendant has been duly served with suit summons but the second defendant has not chosen to come before this Commercial Division. This Commercial Division is informed that the second defendant has not entered appearance through any counsel either.

6. Delay sought to be condoned is 89 days.

7. Adverting to the support affidavit, more particularly paragraph No.4 thereat, learned counsel submits that deponent of the affidavit who



A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

has also verified and signed the written statement on behalf of the first defendant company [Director in the first defendant company] was in constant travel owing to official work besides pre-occupation on account of some personal matters. Therefore, the written statements could not be finalised is the pleading. It is also averred that delay is neither wilful nor wanton but was completely unavoidable.

8. In the light of amendment to 'The Code of Civil Procedure, 1908 (5 of 1908)' [hereinafter 'CPC' for the sake of convenience, clarity and brevity] by 'The Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CCA' for the sake of brevity, convenience and clarity] and more particularly the substituted proviso to Order VIII Rule 1 of 'CPC', it has become necessary to look at the date of service of suit summons. To be noted, this substituted proviso in 'amended The Code of Civil Procedure, 1908' [hereinafter 'amended CPC' for the sake of brevity and convenience] as amended by 'CCA' has been held to be mandatory by Hon'ble Supreme Court in ***SCG Contracts (India) Private Limited Vs. K.S.Chamankar Infrastructure Private Limited*** reported in (2019) 12 ***SCC 210***.

9. In the case on hand, the date of service of suit summons on first



A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

defendant is 24.05.2022 [as per case file placed before this Commercial Division]. The first defendant ought to have filed the written statement within 30 days i.e., by 22.06.2022. Be that as it may, admittedly that did not happen and this means the first defendant can now file written statements on a date beyond 22.06.2022 as may be specified by this Court for reasons to be recorded in writing and on payment of such costs as this Commercial Division deems fit but the rider is, this shall not be later than 120 days from the date of service of summons, after which the defendant forfeits right to file the written statement. In the case on hand, 120 days from the date of service of suit summons elapsed on 21.09.2022 but the written statements have been filed on 19.09.2022 along with captioned 'COD' applications. Therefore, it is just within the condonable timeline qua 'COD' prayers.

10. The plaintiff has not come forward to oppose these applications and in any event the 'COD' prayers, more so considering the ground on which it is predicated is a matter between the Court and the applicant.

11. This Commercial Division in the light of narrative thus far, is of the view that it would be appropriate to accede to 'COD' prayers by directing payment of costs. The first defendant shall pay costs of



A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

Rs.5,000/- each in both captioned applications [Rs.10,000/- in all] to Blue Cross of India, No.72, Velachery Road, Guindy, Chennai -32, within one week from today i.e., by 22.11.2022.

12. If the aforementioned costs is not paid, captioned applications will stand dismissed without reference to this Commercial Division and axiomatically on payment of costs within the aforementioned timeline, the captioned applications will stand ordered without further reference to this Commercial Division. On compliance, Registry to take the written statements to file if otherwise in order.

13. Captioned applications disposed of on above terms.

14. Though captioned applications have been disposed of by this order, Registry is directed to list the captioned applications under the cause-list caption 'FOR REPORTING COMPLIANCE' on 23.11.2022.

**15.11.2022**

ds



WEB COPY



A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

M.SUNDAR, J

ds

A.No.4956 of 2022 in C.S.(Comm.Div.) No.94 of 2022  
and  
A.No.4957 of 2022 in C.S.(Comm.Div.) No.95 of 2022

15.11.2022