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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 4TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

A.Nos. 4679 and 4680 of 2021

in

C.S.(Comm. Div.)No. 706 of 2018

**C.S.No. 706 of 2018:-**

M/s. Housing Development Finance Corporation Limited  
represented by its Manager Legal,  
2<sup>nd</sup> Floor, ITC Centre,  
No. 760 Anna Salai,  
Chennai – 600 002.

... Plaintiff

Vs.

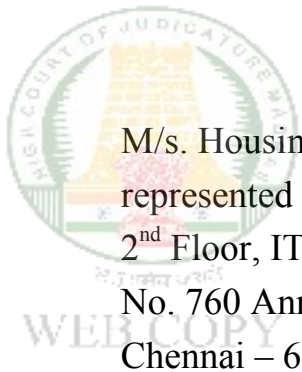
M.Vivekanandan  
Onld No.70, New No.32, 6<sup>th</sup> Street,  
Surendra Nagar, Adambakkam,  
Chennai – 600 088.

...Defendant

**A.No. 4679 and 4680 of 2021:-**

M.Vivekanandan  
Onld No.70, New No.32, 6<sup>th</sup> Street,  
Surendra Nagar, Adambakkam,  
Chennai – 600 088.

...Applicant



M/s. Housing Development Finance Corporation Limited  
represented by its Manager Legal,  
2<sup>nd</sup> Floor, ITC Centre,  
No. 760 Anna Salai,  
Chennai – 600 002.

...Respondent

A.No.4679 of 2021:-

Application praying that this Hon'ble Court be pleased to grant leave to accept the documents filed along with the proof affidavit of the defendant in support of his case.

A.No.4680 of 2021:-

Application praying that this Hon'ble Court be pleased to condone the delay of 99 days in filing the documents on the side of the applicant/plaintiff.

These Applications coming on this day before this court for hearing, the court made the following order:-

These applications have been filed by the defendant seeking for the leave of this Court to file 11 documents to substantiate the defence of the applicant and to condone the delay of 99 days in filing the documents.



02.04.2019. At the time of filing the written statement, the applicant did not file the documents relied upon by him. This Court by an order dated 17.08.2021, fixed the time lines for completion of the trial and the matter was directed to be posted before the learned Additional Master No.II for trial. Subsequent to this order, these applications came to be filed by the applicant on 02.12.2021.

3. Heard Mr.A.G.Rajan, learned counsel for the applicant and Mr.K.J.Parthasarathy, learned counsel for the respondent.

4. The applicant in the affidavit filed in support of the applications has stated that he was working at Riyadh, Saudi Arabia since the year 2012 and he was not in a position to collect all the documents and hand over to the counsel at the time of filing of written statement. It is further stated that due to the pandemic situation, the applicant was not able to immediately come over to India and collect the documents. As a result of the same, the documents were not filed along with the written statement.

5. The respondent/plaintiff has filed a counter affidavit and both the



applications have been opposed. The learned counsel for the respondent/plaintiff submitted that the suit was instituted in the year 2018 and the written statement was filed in the year 2019 and most of the documents that are sought to be brought in by the applicant pertains to the period 2014-2019 and there is no valid reason stated in the affidavit to justify as to why these documents were not filed along with the written statement. The learned counsel also brought to the notice of this Court Order XI Rule (10) of the Commercial Courts Act, 2015 as amended and submitted that the applicant must establish a reasonable cause for not disclosing the documents that were available even at the time of filing the written statement and in the absence of the same, the leave should not be granted. The learned counsel, therefore, sought for the dismissal of these applications.

6. Per contra, the learned counsel for the applicant submitted that the applicant had sufficiently pleaded even in the written statement and the documents substantiate the said defence could not be filed and the reason as to why the documents were not able to be filed has been clearly explained in the affidavit filed in support of the applications. The learned counsel submitted that the applicant will be put to grave prejudice if the documents are not allowed to be relied upon. Therefore, the learned



counsel stated that the applications may be allowed and the applicant may be permitted to rely upon the documents.

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7. A careful reading of the affidavit filed in support of the applications shows that the applicant wants to rely upon nearly 11 documents to substantiate his defence. Out of those 11 documents, 8 documents pertain to the period between the year 2014 upto March 2019. The written statement was filed by the defendant on 02.04.2019. This would only mean that these documents were available at the time when the written statement was filed. Insofar as the other 3 documents are concerned, they have come into existence after the filing of the written statement. This Court must, therefore, ascertain as to whether the applicant has given a reasonable cause for not filing 8 documents along with the written statement.

8. The applicant has stated that he availed of a housing loan from the respondent and purchased the property by thinking that the person, who claimed to be the owner, is the actual owner of the property. However, only later, the applicant came to know that he was cheated by the vendor by using forged documents and hence, a criminal complaint was lodged and the concerned persons were also arrested



and the investigation is pending. It is further stated that the applicant is working at Riyadh, Saudi Arabia since 2012. The applicant was not able to collect all the relevant documents and give the same to his counsel at the time of filing the written statement. Even thereafter due to the pandemic situation, the applicant was not able to immediately come over to India to collect the documents and hand over the same to his counsel.

9. In the considered view of this Court, the documents relied upon by the applicant are crucial in order to establish the defence of the applicant. The reason given by the applicant for not filing 8 documents that were available at the time of filing the written statement, sounds plausible and reasonable. Even though there is a delay in seeking for leave to bring in the documents, the delay deserves to be condoned and by allowing these applications, no prejudice is going to be caused to the respondent. While dealing with an application of this nature, the Court has to necessarily balance the procedure in such a way that it does not adversely affect the right of defence of the defendant. This Court is convinced with the reasons assigned in the applications and hence, both the applications deserves to be allowed.



10. In the result, both the applications are allowed. Considering the facts and circumstances of the case, there shall be no order as to costs.

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Sd./-NAVJ

04/01/2022

//Certified to be true copy//

Dated at Madras this the      day of      2022.

COURT OFFICER(O.S.)

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EVK 07/01/2022