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**A.No.4814 of 2021**  
**in**  
**C.S.(Comm. Suits) No.289 of 2020**

**SENTHILKUMAR RAMAMOORTHY, J**

This application is filed to condone the delay of 305 days in filing the written statement of the third defendant.

2. The applicant/third defendant states that suit summons was served on the third defendant on 07.12.2020. Thereafter, the case papers were served on 22.01.2021. Meanwhile, it is stated that the COVID-19 pandemic intervened in its second wave. According to the applicant, it resulted in the death of persons employed by the third defendant and considerable disruption in its functioning. The applicant relies upon the judgment of the Hon'ble Supreme Court in *Prakash Corporates vs. Dee Vee Projects Limited* [2022 LiveLaw (SC) 162] to contend that the period extending from 15.03.2020 to 02.10.2021 was directed to be excluded by the Hon'ble Supreme Court from the period of limitation imposed under statutes, including under the Code of Civil Procedure as amended by the Commercial Courts Act, 2015. On such basis, it is requested that the delay may be condoned.

3. The respondent refutes the above contentions with specific reference to a table of dates and events in paragraph 20 of its reply



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affidavit. The respondent/plaintiff states that the applicant/third defendant had participated in proceedings. In particular, it is stated that the applicant took part in the trial process and even cross-examined the plaintiff's witnesses. The respondent also points out that learned counsel for the second defendant had undertaken to file vakalat for the third defendant much before the suit summons was served on the third defendant. Keeping in mind the current stage of the suit, the respondent states that this application should be dismissed or, even if allowed, costs should be imposed on the applicant.

4. The facts on record indicate beyond doubt that the applicant participated in proceedings, including in the trial process. Such trial was concluded and the case is at the stage of arguments. Therefore, the plaintiff would be prejudiced if the present application is allowed. At the same time, as pointed out by the applicant/third defendant, it is entitled to the benefit of the order of the Hon'ble Supreme Court, which was adverted to supra. By taking into consideration the aforesaid factors, this application is allowed on the following terms:

- 1. The third defendant shall serve a copy of the proof affidavit of its witness on the plaintiff on or before 04.04.2022.*
- 2. Such witness shall be available for examination between 04.04.2022 and 13.04.2022.*



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*3. Subject to the aforesaid, A.No.4814 of 2021 is allowed. In case the third defendant does not comply with the above conditions, the third defendant shall pay a sum of Rs.50,000/- as costs to the plaintiff.*

*List before the learned Additional Master I on 04.04.2022 for recording evidence in accordance with the above schedule.*

*List before this Court on 27.04.2022.*

**25.03.2022**



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**SENTHILKUMAR RAMAMOORTHY, J**

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**25.03.2022**