



A.No.4777 of 2022

A.No.4777 of 2022
in
C.S.(Comm.Div)No.98 of 2021

C.SARAVANAN, J.

This application has been filed to condone the delay of 214 days in representing the Written Statement in C.S.(Comm.Div)No.98 of 2021.

2. The facts on record indicate that the suit summons on the defendant was served on 13.12.2021. Therefore, 30 days period prescribed under Order VIII Rule 1 of the Code of Civil Procedure would have expired on 12.01.2022.

3. By an order dated 01.02.2022, the defendant was allowed to file a Written Statement without an application. As per the aforesaid order, on 10.02.2022, the Written Statement was filed after serving a copy of the same to the learned Counsel for the plaintiff and the defendant.

4. It appears that after the Written Statement was filed on 10.02.2022, However, the Registrar has raised certain objections as to how the Written Statement was filed without an application, which went unnoticed and



therefore on coming to know about the same, the Written Statement was represented by the defendant on 18..09.2022.

5. This Application is opposed by the learned Counsel for the respondent/plaintiff by placing reliance on the decision of the Hon'ble Supreme Court in **SCG Contracts (India) Private Limited Vs K.S.Chamankar Infrastructure Private Limited and others**, (2019) 12 SCC 210. A specific reference is made to Paragraph 8, which reads as under:-

"8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be



WEB COPY



A.No.4777 of 2022

allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty five days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

6. It is submitted that the defendant has forfeited its rights to file a Written Statement as no application for condonation of delay has been filed.

7. I have considered the arguments advanced by the learned Counsel for the plaintiff and the defendant.

8. The second proviso to sub-rule 1 to Order 5 Rule 1 of C.P.C, reads as under:-

"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."



A.No.4777 of 2022

9. Under Order 8 Rule 1 of C.P.C., a new proviso has been substituted, which reads as under:-

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty five days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

10. As per Order 8 Rule 10 of C.P.C., any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fix by the Court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment and decree shall be drawn up.

11. A reading of the above provision indicates that almost 120 days time is given to the defendant to condone the delay in filing the Written Statement.



A.No.4777 of 2022

12. In this case, admittedly, the suit summons was received on 13.12.2021, the Written Statement should have been ordinarily filed within a period of 30 days from 13.12.2021 i.e., should have been filed on 12.01.2022.

13. This Court has already granted time to the defendant by its order dated 01.02.2022 to file a Written Statement by 10.02.2022. The defendants has also filed the same as is evident from the Court Seal on the Written Statement.

14. Thus, the delay if any stood condoned by this Court without any formal application by the defendant. There has been no further delay on the part of the defendant in filing the Written Statement. It was only returned on 18.09.2022 and it was represented immediately. On coming to know that the Written Statement had been returned on 18.09.2022, this application filed for condoning the delay in representing the Written Statement deserves to be allowed and is accordingly allowed.



A.No.4777 of 2022

C.SARAVANAN, J.

arb

15. List the matter on 14.12.2022 for framing issues. The parties are directed to file their draft issues by the next date of hearing. The parties are also directed to agree upon the Schedule for Case Management.

16. Though the learned Counsel for the defendant has raised serious objections stating that the rights of the defendant to condone the delay has been defeated, I am of the view that the delay if any is to be only attributed to the Court and the act of the Court, which cannot cause prejudice to the defendant.

07.12.2022

arb

A.No.4777 of 2022

in

C.S.(Comm.Div)No.98 of 2021