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A.Nos.3068 of 2022 & A.Nos.1107 of 2023

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in

C.S.No.759 of 2006

C.SARAVANAN, J.

The suit is of the year 2006. It appears that late Mr.T.Kumar had entered appearance on behalf of the defendant. The learned counsel for the plaintiff had also served the copy of the plaint on 14.12.2006 on late Mr.T.K.Kumar. The case of the applicant/defendant that a written statement was filed while the case was being handled by Mr.T.Kumar who has since deceased and that the written statement was returned on 23.04.2007 vide D.No.14550 of 2007. The record indicates that the case came up for hearing before this Court on 18.11.2015 and since there was no representation on behalf of the defendant, the defendant was set *ex-parte*. Issues were also framed on 18.11.2015. The order dated 18.11.2015 was later set aside by an order dated 22.06.2017 in A.No.2757 of 2017 subject to terms, the applicant/defendant was directed to deposit $\frac{1}{4}$ share the of the decree amount to the credit of the present suit and pay a further sum of Rs.15,000/- to the respondent/plaintiff on or before 01.08.2017. This has been complied by the applicant/defendant. The applicant/defendant has now filed the present application for permitting the applicant/defendant to reconstruct the



written statement to be taken on file of the Court which was purportedly returned on 24.03.2007 vide D.No.14550 of 2007.

2.The learned counsel for the respondent/plaintiff would submit that the written statement was never filed neither filed nor served on the respondent/plaintiff or the counsel. It is further submitted that question of reconstruction of the file would arise only if the records were lost by the Court while they are in the custody of the Court by applying the latin maxim “*Actus Curiae Neminum Non-Gravabit*” iomplying that no man should suffer by an Act of Court.

3.In this case, admittedly the written statement was never filed and even if it was filed which was returned on 23.04.2007 and was never represented and therefore the question of reconstruction would not arise. A reference is made to the decision of this Court rendered in **Dr.K.Srinivasan Vs. P.Srinivasan** 1989 1 LW 195.

4.It is submitted that if at all it is for the applicant/defendant to file appropriate application for condoning the delay. Reconstruction of a written



statement cannot be countenanced, as it was admittedly not lost in the Court.

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5.I have considered the arguments advanced by the learned counsel for the applicant/defendant and the learned counsel for the respondent/plaintiff and also perused various orders passed by this Court. After the Commercial Division was constituted in the year 2018, this case was first listed before this Court on 23.01.2020. On the said date, the Court had determined the jurisdiction under the provisions of the Commercial Courts Act. The following order was passed:-

“2.Both learned counsel made a common submission in unison that this suit qualified as a 'Commercial Dispute' under sub-clause (xx) of Section 2(1)(c) of 'The Commercial Courts Act, 2015' ('said Act' for brevity). It is submitted that the value of this suit is also well above the requisite threshold in the light of Section 2(1)(i) read with Section 12 of said Act. In other words, it is the common submission of both learned counsel that this suit qualifies as a 'Commercial Dispute' of 'Specified value' and therefore, the matter has to be heard by Commercial Division in view of Section 7 of said Act, which sets out the jurisdiction of Commercial Division of this court. It is submitted by both sides that this lis arises out of insurance, a insurance claim and repudiation of the same. Therefore, this suit qualifies as a 'Commercial Dispute' of 'Specified Value'.”

6.While determining the jurisdiction of this case before the



Commercial Division, the Court was also required to fix the time line as is contemplated in Section 15(4) of the Act. However, no time was fixed. The fact is that the applicant/defendant was set *ex-parte* earlier on 18.11.2015. The said order came to be set aside later on terms on 22.06.2017. The applicant/defendant has also complied with the requirements. The question of reconstruction of a file or a written statement would arise only if the written statement was lost in the Court Registry or while in the custody of the Court. Therefore, the application cannot be entertained for reconstruction of a written statement which was never lost from the custody of the Court. At the same time, no time was fixed for filing a written statement after *ex-parte* order dated 18.11.2015 was set aside on 22.06.2017, after this Commercial Division assumed jurisdiction on 23.01.2020. Applying Section 15(4) of the Commercial Courts Act, 2015, fresh time lines are fixed, there shall be a direction to the applicants/defendants to serve a copy of the written statement on the plaintiff or its counsel for the respondent/plaintiff and thereafter file the same before this Court within a period of one week from the date of receipt of a copy of this order. On filing of the written statement, the written statement of the defendant shall be deemed to have been taken on file of the



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case. The case shall be listed for filing of Statement of Admission and Denial of documents and for fixing its all further time lines in this Commercial dispute between the parties hereto.

7. Therefore, applications stand disposed of.

02.03.2023

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